

No. 10625

United States
Circuit Court of Appeals

For the Ninth Circuit.

ROSE PAPANTONIO, suing in her own behalf as a shareholder of
TRANSAMERICA CORPORATION and in behalf of all other
shareholders of said corporation similarly situated,

Appellant,

vs.

AMADEO P. GIANNINI, L. M. GIANNINI, A. H. GIANNINI, AMA-
DEO P. GIANNINI (as Executor of the Last Will and Testa-
ment of Virgil D. Giannini, Deceased), BANK OF AMERICA
NATIONAL TRUST & SAVINGS ASSOCIATION, a national
banking association (as Administrator-With-The-Will-Annexed
of the Estate of John M. Grant, Deceased), GORDON GRAY,
O. D. HAMLIN, T. W. HARRIS, A. P. JACOBS, F. C. STEVE-
NOT, RUSS AVERY, P. A. BRICCA, GEORGE J. DE MARTINI,
W. N. LAGOMARSINO, A. J. SCAMPINI, WILLIAM E.
BLAUER, LEON BOCQUERAZ, E. H. CLARK, CHARLES N.
HAWKINS, W. F. MORRISH, A. J. MOUNT, ALFRED E.
SBARBORO, CHESTER H. LOVELAND, P. C. HALE, JAMES
A. BACIGALUPI, ARMANDO PEDRINI, GEORGE A.
WEBSTER, E. J. NOLAN, C. R. BELL, W. W. GARTHWAITE,
GEORGE N. ARMSBY, LOUIS FERRARI, V. SCIALOJA,
THEODORE M. STUART, HERBERT E. WHITE, CHARLES
DE Y. ELKUS, WILLIAM S. HOELSCHER, CLIFFORD P.
HOFFMAN, C. J. SMITH, VERNON C. WALSTON, AMADEO P.
GIANNINI, L. M. GIANNINI AND CLAIRE GIANNINI
HOFFMAN, transacting business as co-partners under the firm
name and style of WALSTON & CO., and AMADEO P. GIAN-
NINI (as the Executor of the Last Will and Testament of
Virgil D. Giannini, a deceased member of said co-partnership),
WALSTON & CO., a co-partnership and TRANSAMERICA
CORPORATION, a corporation,


Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

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HOFFMAN, transacting business as co-partners under the firm
name and style of WALSTON & CO., and AMADEO P. GIAN-
NINI (as the Executor of the Last Will and Testament of
Virgil D. Giannini, a deceased member of said co-partnership),
WALSTON & CO., a co-partnership and TRANSAMERICA
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Appellees.

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Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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W. F. Morrish, A. J. Mount, Alfred E. Sbarboro,
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*Page numbering appearing at foot of page of original certified
Transcript of Record.

In the District Court of the United States, Southern District of California, Central Division

ROSE PAPANTONIO, suing on behalf of herself and all other stockholders of Transamerica Corporation, similarly situated, who may join in this action and contribute to the expense thereof,
Plaintiff,

Against

AMADEO P. GIANNINI, L. M. GIANNINI, JOHN M. GRANT, GORDON GRAY, O. D. HAMLIN, T. W. HARRIS, A. P. JACOBS, F. G. STEVENOT, J. RUSS AVERY, P. A. BRICCA, GEORGE J. DE MARTINI, W. N. LAGOMARSINI, A. J. SCAMPINI, WILLIAM E. BLAUER, LEON BOCQUERAZ, E. H. CLARK, CHARLES N. HAWKINS, W. F. MORRISH, A. J. MOUNT, ALFRED E. SPARBORO, CHESTER H. LOVELAND, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, CHARLES DE Y. ELKUS, WILLIAM S. HOELSCHER, CLIFFORD P. HOFFMAN, C. J. SMITH and VERNON C. WALSTON, individually and as copartners doing business under the firm name and style of Walston & Co., and TRANSAMERICA CORPORATION,

Defendants.

COMPLAINT

Comes now the above named plaintiff complaining of the above named defendants, and for her com-

plaint alleges upon information and belief except as to paragraphs 1, 5 & 8, which plaintiff alleges upon knowledge, as follows:

1. Plaintiff is and has been a stockholder of the defendant, Transamerica Corporation (hereinafter referred to as "Transamerica"), since 1929, and brings this action on behalf of herself and all other stockholders of said corporation similarly situated who may join in this action and contribute to the expense thereof and for the benefit of Transamerica.

[2]

2. Defendant, Transamerica is a corporation organized and existing under the laws of the State of Delaware and doing business, among other places, in the State of California.

3. Defendant, Bank of America National Trust and Savings Association (hereinafter referred to as Bank of America), is a corporation organized and existing under the laws of the State of California, with a principal office for the transaction of its business in the State of California.

4. Pacific Coast Mortgage Co. Transamerica Service Corporation, California Lands Inc., Capital Co., Bankitaly Company of America, Inter-America Corporation, American Brokerage, Inc., Associated American Distributors Inc., Inter-Continental Corporation, Corporation of America, Bank-america Company, Western States Corporation, Occidental Life Insurance Co., Pacific National Fire Insurance Company, Commercial Holding Corporation, Corporation of America, Transamerica Bank Holding Co. and Transamerica General Corpora-

tion, are corporations which were at all times hereinafter mentioned, wholly owned or virtually wholly owned subsidiaries of Transamerica, and have at all times hereinafter mentioned been dominated and controlled by Transamerica Corporation and by A. P. Giannini, L. M. Giannini and John M. Grant. Bank of America was until in or about July, 1937, a wholly owned subsidiary of Transamerica. Since said date Transamerica has owned approximately thirty per cent. of the stock of said Bank of America. At all the times hereinafter mentioned, said Bank of America has been dominated and controlled by Transamerica and by A. P. Giannini, L. M. Giannini and John M. Grant. [3]

5. The plaintiff resides in and is a citizen of the State of New York.

6. The individual defendants herein are citizens of and reside in the State of California.

7. The jurisdiction of this court depends upon diversity of citizenship.

8. The plaintiff now is and has been a stockholder of Transamerica during all the times when the transactions hereinafter referred to occurred. This action is not a collusive one instituted for the purpose of conferring on a court of the United States jurisdiction of a cause of action of which it would not otherwise have cognizance.

9. The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$3,000.00.

10. The following defendants were directors of Transamerica during the years indicated:

Amadeo P. Giannini	1931 to date
L. M. Giannini	1931 to date
John M. Grant	1932 to date
Gordon Gray	1932 to date
O. D. Hamlin	1932 to date
T. W. Harris	1932 to date
A. P. Jacobs	1932 to date
F. G. Stevenot	1932 to date
J. Russ Avery	1932 to date
P. A. Bricca	1932 to date

[4]

George J. De Martini	1932 to date
W. N. Lagomarsino	April, 1933 to date
A. J. Scampini	April, 1933 to date
W. E. Blauer	1931
A. E. Sbarboro	1931
Leon Bocqueraz	1931
E. H. Clark	1931
C. N. Hawkins	1931
W. F. Morrish	1931
A. J. Mount	1931
Chester E. Loveland	April, 1932 to April, 1934

11. That at all the times hereinafter mentioned, A. P. Giannini, A. H. Giannini, L. M. Giannini and John M. Grant, through stock ownership and otherwise, controlled and dominated the affairs of Transamerica, and by means of such control and domination, selected and named their representatives and nominees as members of the Board of Directors of Transamerica, and directly and indirectly decided and determined the business policies, affairs and personnel of Transamerica and its subsidiaries. Said directors, representatives and nominees during all of said times constituted the entire Board of Directors of Transamerica. By reason of the foregoing, the directors of Transamerica at all times hereinafter mentioned failed

to exercise their independent judgment in the performance of their official duties, and whenever the interests of A. P. Giannini, A. H. Giannini, L. M. Giannini and John M. Grant came into conflict with the interests of Transamerica, said directors [5] fraudulently permitted their official acts and conduct to be dictated by said A. P. Giannini, A. H. Giannini, L. M. Giannini and John M. Grant, as hereinafter more particularly set forth.

12. Transamerica was organized in or about the year 1929. On or about June 6, 1927 Bancitaly Corporation (hereinafter referred to as "Bancitaly"), the predecessor of Transamerica, passed a resolution providing that A. P. Giannini should receive in lieu of salary 5% of the net profits of Bancitaly for each year beginning with January 1, 1927, with a guaranteed minimum of \$100,000 a year. From 1927 on, and over a period of several years, said A. P. Giannini received pursuant to the said resolution over \$5,000,000. which was more than 5% of the actual profits of Bancitaly during the said period. During the said period, the profits of Bancitaly upon which the said 5% was computed as aforesaid, were inflated by various devices, some of which are hereinafter enumerated and described. As a result, said A. P. Giannini received more than \$4,000,000. in excess of the 5% of the actual net profits of Bancitaly. That Transamerica, in 1930, as successor to Bancitaly acquired all of the assets of Bancitaly and assumed all of said company's liabilities.

13. On or about January 20, 1930, there was credited to A. P. Giannini on the books of Bankitaly Company of America, which company was a subsidiary of Transamerica, the sum of \$1,400,000, in connection with the aforesaid 5% arrangement. The sum of \$608,000. was paid to said A. P. Giannini in September, 1931 leaving a balance of some \$791,000 to his credit. When said A. P. Giannini in 1931 demanded the payment of said sum of \$791,000, various counsel for Transamerica advised that payment of this sum [6] would be illegal, and the Board of Directors of Transamerica refused to make such payment. Thereafter and in the latter part of 1931 and 1932, the said A. P. Giannini, A. H. Giannini, L. M. Giannini, and John M. Grant, gained control of Transamerica and of Bankitaly Company of America, and the aforesaid sum of \$791,000 was paid to said A. P. Giannini as follows: \$134,826.58 in 1932; \$132,896.92 in 1933; \$100,596.24 in 1934; \$251,952.03 in 1935; \$65,914.28 in 1936 and the balance of said fund in 1937 and 1938.

14. In or about 1931, said A. P. Giannini had received more than 5% of the actual net profits of Bancitaly earned between 1927 and 1930 and the aforesaid sum of \$791,000 was a balance of credit computed on inflated and fictitious profits. Furthermore, no resolution passed by the Directors of Transamerica authorized the aforesaid payments to said Giannini from 1932 to 1938.

15. The methods and devices, among others, employed by Bancitaly to inflate its profits as aforesaid, were as follows: Bancitaly acquired shares

of Bank of Italy, National Bancitaly, United Bank & Trust Company, Oakland Bank, Bowery & East River Bank and Bank of America, and other securities from its subsidiaries and affiliates at far below their market value, and resold the same to the public at a profit despite the fact that the banks and companies aforementioned could have sold said securities directly to the public and made the profits themselves, and in each case the moneys so received would have had to have been treated as accretions to capital. That the acquisition of such shares and the sale thereof as aforesaid by Bancitaly was contrary to sound and established accounting practice.

16. Bancitaly, Transamerica and their subsidiaries and affiliates, made a practice of charging 6 or 8 [7] per cent of the amount that said companies had invested in stocks of subsidiaries and affiliates as interest. The result of said practice was to increase the apparent book profit of such investments and was contrary to sound and established accounting practice. In the year 1930 alone, the profits of Bancitaly were inflated in this matter by the sum of \$166,714.47.

17. Bancitaly credited itself with a profit of \$36,000,000 on the sale of stock of Bank of America, although in actuality, no such large profit was made because the book profit failed to take into account the fact that said stock was sold pursuant to subscription contracts which provided that Bancitaly, the vendor, agrees to repurchase said stock and refund the purchase price if the subscriber de-

sired to cancel the subscription. In 1929, Bancitaly Company of America listed upon its books a profit of upwards of \$7,000,000. on sales of securities to Commercial Holding Company (the name of said latter company being subsequently changed to Inter-Continental Corporation). Both Commercial Holding Company and Inter-Continental Corporation were wholly owned subsidiaries of Transamerica. The greater part of the so-called profits made on such sales of securities was subsequently reduced by the loss which Commercial Holding Company suffered when it resold said securities and as a result of said loss the aforesaid so called profit did not appear on the consolidated statement of Transamerica and its subsidiaries because of the fact that it was a non-realized profit.

18. Between 1934 and 1937 Transamerica paid approximately \$2,800,000 to Associated American Distributors, Inc. (which company was a wholly owned subsidiary of Inter-Continental Corporation, which was itself a wholly owned subsidiary of Transamerica) which money was used by [8] Associated American Distributors, Inc. for commissions and other expenses in connection with the solicitation of orders for the purchase of the capital stock of Transamerica. Said Associated American Distributors, Inc. entered into contracts with independent dealers and with salesmen employed by it and paid commissions to the said dealers and salesmen for orders obtained, and "in order to encourage retention of the stock so purchased, would pay additional commissions in proportion to the

duration of "placements". Associated American Distributors, Inc. did not solicit orders for the purchase of capital stock held by Transamerica in its Treasury although such solicitation and the sales of such stock would have resulted in profits to Transamerica. The following amounts were paid by Transamerica to Associated American Distributors Inc. for commissions and other expenses as aforesaid: In 1934, \$336,857; in 1935 \$891,202.17; in 1936, \$1,124,724.78; in 1937, \$447,000.

19. That payments made by Transamerica to Associated American Distributors, Inc. as alleged in paragraph "18" hereof, were illegal and improper, and a waste of the assets of Transamerica. That the said payments were made for the profit and gain of A. P. Giannini, A. H. Giannini, L. M. Giannini, and John M. Grant, who made large profits as a result of such purchases and sales of the stock of Transamerica, in amounts unknown to the plaintiff.

20. In 1931, the National Bank Examiners went over the books of Bank of America and required that \$35,000,000 of the assets of said bank be charged off as losses and assets of a doubtful and unsatisfactory character and that they be eliminated from the books of said bank as assets. Despite the requirement of said bank examiners, said assets were not charged off and eliminated from the books of said bank. Said bank entered into three contracts, [9] dated respectively June 26, 1931, December 30, 1931 and February 13, 1932, with Corporation of America (said Bank of America and Cor-

poration of America being then 99.65% owned by Transamerica Bank Holding Company, a wholly owned subsidiary of Transamerica), by the terms of which the Corporation of America agreed to purchase the doubtful and worthless assets condemned by said bank examiners as aforesaid, for \$35,214,000, the buyer pledging these and other assets with the seller as collateral security for the obligation to purchase. In August, 1933 the aforesaid three contracts were assigned by Corporation of America to Transamerica Bank Holding Company (the name of said latter company being changed on April 20, 1935 to Inter-America Corporation). Although the aforesaid contracts were really outright obligations to purchase the aforesaid assets, the transaction was treated on the books of the buyer and the subsequent assignees of the buyer as a contract of guarantee.

21. On or about February 1, 1933, Bank of America sold certain of its charged off assets to Corporation of America, (both corporations being then 99.65% owned by Transamerica), for \$250,000. The said agreement of transfer, dated February 1, 1933, was assigned by Corporation of America to Transamerica General Corporation and thereafter reassigned by Transamerica General Corporation to Transamerica Bank Holding Company for the same consideration. Transamerica General Corporation and Transamerica Bank Holding Company were both wholly owned subsidiaries of Transamerica. On or about January 2, 1934, the Bank of America

sold to Transamerica Bank Holding Company (which company, on April 20, 1935, changed its name to Inter-America Corporation) additional charged off assets of said Bank of America for an additional \$50,000. On or about October 1, 1936, Inter-Amer- [10] ica Corporation transferred the aforesaid charged off assets to California Lands Inc. and Capital Co. (both of said corporations being wholly owned by Transamerica General Corporation) for \$500,000. On or about July 14, 1937, California Lands, Inc. and Capital Co. sold the aforesaid charged off assets, less \$1,486,185 collected by Inter-America Corporation for their account, to the Bank of America for \$6,500,000., and Transamerica entered into an agreement with Bank of America guaranteeing it against losses in connection with said repurchase. In connection with this guarantee of the repurchase by Bank of America of its charged off assets, Transamerica pledged securities having a market value of \$1,338,835, and investments and securities of affiliates having a carrying value of \$5,636,576 as collateral security. That as a result of the foregoing transactions, Bank of America was enabled to and did write up its assets by an additional \$6,500,000 during the year 1937.

22. The balance sheets of California Lands Inc. and Capital Co. for the year 1936 set forth a profit from the above transactions of \$297,918.26 and \$297,919.23 respectively and in 1937, \$345,120.54 and \$345,119.56 respectively, which figures represent excess of realization over the cost of said charged off assets to the companies. Furthermore, in the year

1937, each of said companies set forth the sum of \$3,250,000 as profit realized in connection with the repurchase of the aforesaid charged off assets of Bank of America. The aforesaid entries on the books of California Lands, Inc. and Capital Co. were false and misleading.

23. That the purpose of the transactions referred to in Paragraphs "20", "21" and "22" of the complaint herein was to inflate and write up artificially the assets [11] of Bank of America. That in or about July, 1937, Bank of America ceased to be a wholly owned or virtually wholly owned subsidiary of Transamerica as aforesaid, and thereafter Transamerica owned approximately 30% of the stock of Bank of America. That the contracts and transactions referred to in paragraphs 20, 21 and 22 hereof were illegal, improper and ultra vires, and have resulted in great damage and irreparable loss and injury to Transamerica and its subsidiaries in an amount unknown to plaintiff, and unless said contracts and transactions are rescinded and cancelled will result in further irreparable loss, injury and damage to Transamerica and its subsidiaries. That by reason of the foregoing said contracts, guarantees, and pledges of securities by Transamerica and its subsidiaries referred to in paragraphs 20, 21 and 22 hereof should be cancelled and rescinded and the securities pledged in connection therewith released from pledge and restored to Transamerica and its subsidiaries.

24. In or about July, 1937, Transamerica sold to Bank of America 56,600 shares of National City

Bank stock at the prevailing market price of \$48 a share for a total purchase price of \$2,716,800. Payment for said stock was made by crediting \$2,716,800 to Inter-America Corporation in connection with the obligation of Inter-America Corporation to purchase the charged off assets of Bank of America pursuant to the aforesaid three contracts of June 26, 1931, December 30, 1931 and February 13, 1932, assigned to Inter-America Corporation in August 1933 as aforesaid, reducing by the amount of \$2,716,800 the balance of the \$35,214,000, which Inter-America Corporation was obliged to pay under said contracts. As part of the contract of purchase of said National City Bank stock, Transamerica agreed to repurchase the same at \$48 per share over a period of [12] five years at the rate of 11,320 shares per year and pledged an additional block of 18,400 shares to secure its obligations under said agreement. By the end of 1937, the market value of the aforesaid National City Bank stock had dropped to \$27. a share.

25. Although this transaction was treated by Transamerica according to its balance sheet for the year 1937 as an option to purchase certain securities, actually it was a binding agreement to purchase the said National City Bank stock and was illegal, improper and ultra vires and Transamerica has lost a large amount of money in connection with the said agreement and suffered other irreparable damage and loss, and unless said agreement is set aside is threatened with the loss of further moneys and further irreparable damage, loss and injury in connection therewith. Any such losses and damages in

connection with the said agreement have been and will continue to be a waste and misappropriation of the assets of Transamerica because neither Transamerica, nor its subsidiary, Inter-America Corporation, received any consideration or benefit in connection with the aforesaid transactions, whereby Bank of America was enabled to write up its doubtful assets by upwards of \$35,000,000. That said agreement to repurchase said National City Bank stock should be cancelled and rescinded. [13]

26. At all the times herein mentioned the defendants Elkus, Hoelscher, Hoffman, Smith and Walston were partners in the firm of Walston & Company. During the years 1932 to date, said defendants and said firm of Walston & Company made large profits as the result of commissions received from Transamerica, Bank of America and Pacific Coast Mortgage Co. in connection with underwriting and other services performed by Walston & Co. for Transamerica, Bank of America and Pacific Coast Mortgage Co. That during all of said times, A. P. Giannini, A. H. Giannini, L. M. Giannini and John M. Grant were financially interested in Walston & Co. although they did not disclose said financial interest to the other directors of Transamerica. The commissions and fees paid by Transamerica, Bank of America and Pacific Coast Mortgage Co. to Walston & Co. were excessive and were due to the control and domination of the Boards of Directors of said companies by the aforesaid individuals. As a result of their financial interest in Walston & Co. the afore-

said individuals realized large profits in an amount unknown to the plaintiff at the present time, at the expense of Transamerica, Bank of America and Pacific Coast Mortgage Co., for which they should be made to account to Transamerica.

27. From 1937 to date the defendants who were officers and directors of Transamerica, directly or indirectly, received remuneration from Transamerica, Pacific Coast Mortgage Company and other subsidiaries and affiliates of Transamerica in excess of that to which they were legally entitled and in violation of the by-laws of said companies to the damage of Transamerica, its subsidiaries and affiliates, for which they should account to Transamerica. [14]

28. That during the years 1937 and subsequent years Transamerica has filed with the Securities & Exchange Commission and the New York Stock Exchange and Los Angeles Stock Exchange, applications for the registration of shares of its capital stock, amendments to said application, information supplemental thereto, annual reports and other data and information required by the Securities & Exchange Act of 1934 and other Statutes and the rules and regulations applicable thereto. That said applications, amendments and reports and other information and data contained false and misleading information, failed to disclose information required to be disclosed and in other respects were false and inaccurate. As a result thereof, the Securities & Exchange Commission issued certain orders for hearings to determine whether said application for registration and amendments thereto and said annual reports and other in-

formation filed as aforesaid, failed to comply with the Securities & Exchange Act of 1934 and the rules and regulations applicable thereto and whether it was necessary or appropriate to suspend or withdraw such registration. As a result thereof, various hearings in respect to Transamerica have been held in Washington and Los Angeles and large sums of money have been expended by Transamerica for fees for accountants, investigators, witnesses, attorneys and for the printing of records, transportation and other expenses incidental to said hearings and the investigations conducted by the Securities & Exchange Commission. That all of said expenditures could have been avoided by a reasonably prompt compliance with the Securities & Exchange Act of 1934 and the rules and regulations applicable thereto, but that the individual defendants failed and refused to comply therewith and failed and refused to comply with the reasonable requests of the Securities & Exchange Commission. As [15] a consequence thereof, the aforesaid expenditures have resulted in great damage to Transamerica and the aforesaid expenditures have been a waste of the assets of Transamerica.

29. That from 1931 to date A. P. Giannini, A. H. Giannini, L. M. Giannini and John M. Grant have participated in pools for the purpose of manipulating the market value of Transamerica's stock, and in order to enable them to buy and sell the said stock at substantial profits. As a result said defendants were enabled to make substantial profits for which they should be made to account to Transamerica.

30. That the acts and transactions heretofore referred to in paragraphs 12-29 of this complaint, were part of a plot, plan and conspiracy by A. P. Giannini, A. H. Giannini, L. N. Giannini and John M. Grant to use the domination and control which said defendants exercised over the affairs of Transamerica and its subsidiaries for their own advantage and to the detriment and at the expense of Transamerica and its subsidiaries. All of the defendants who have been directors of Transamerica from 1931 to date became parties to said unlawful plot, plan and conspiracy at or about the time of their respective assumptions of office, in that they knew of, acquiesced in and consented to all of the wrongful acts committed pursuant to said unlawful plot, plan and conspiracy as hereinbefore alleged prior to their respective assumptions of office, and further in that they, having full knowledge of such acts, failed to and refused to seek legal redress therefor on behalf of Transamerica, although such redress could have been had, and in that they agreed to and participated in all wrongful acts committed pursuant to said unlawful plot, plan and conspiracy after their respective assumptions of office. [16]

31. That as a result of the foregoing, defendants A. P. Giannini, A. H. Giannini, L. M. Giannini and John M. Grant have realized large profits at the expense of Transamerica and Transamerica has sustained substantial damages. The exact amount of such profits realized and damages suffered is unknown to plaintiff and can be ascertained only by an accounting in this action.

32. The directors of Transamerica have from 1931 to date, fraudulently concealed the acts, transactions and matters hereinbefore referred to from the plaintiff and the other stockholders of Transamerica. Said acts, transactions and matters were not referred to in the annual reports and other communications from Transamerica to its stockholders; and the minute book, books of account and other books and records of Transamerica failed to disclose or misrepresented said acts, transactions and matters, in whole or in part. The plaintiff has only recently learned of the acts, transactions and matters hereinbefore referred to, as a result of the investigation conducted by the Securities & Exchange Commission into the affairs of Transamerica.

33. That plaintiff has made no demand upon Transamerica, or upon the Board of Directors of Transamerica to institute and prosecute actions to recover for the wrongs complained of herein because all of the present directors of Transamerica participated in said wrongful acts and are liable to account therefor, or with full knowledge thereof acquiesced and consented thereto, and failed and refused to seek legal redress therefor, and without their consent and direction such suits would not be brought, and such demand would be futile and unavailing. Moreover the acts complained of herein have at all times been known to present [17] directors of Transamerica, but these directors, acting in bad faith have failed, refused and neglected to take any steps whatsoever to seek redress for such wrongs for the benefit of Transamerica.

34. That plaintiff has no adequate remedy at law.

Wherefore, plaintiff prays for judgment (a) that A. P. Giannini, A. H. Giannini, L. M. Giannini and John M. Grant be required to account to Transamerica for all profits, gains, benefits and emoluments obtained and secured by them by reason of the matters hereinbefore set forth; (b) that the defendants, and each of them be required to account to Transamerica for all losses and damages sustained by Transamerica by reason of the matters hereinbefore set forth; (c) that the defendants and each of them, other than Transamerica, be required to pay to the plaintiff the reasonable expenses incident to the prosecution of this action, including a reasonable counsel fee; and (d) that plaintiff have such other and further relief as to the Court may seem just and proper.

JOSEPH A. RUSKAY,
VINCENT A. MARCO,
PERCY V. CLIBBORN
By PERCY V. CLIBBORN,
Attorney for Plaintiff. [18]

State of New York
County of Bronx—ss.

Rose Papantonio, being duly sworn, deposes and says she is the plaintiff in the within action; that she has read the foregoing complaint and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated

to be alleged on information and belief, and that as to those matters she believes it to be true.

ROSE PAPANTONIO

Sworn to before me this 27th day of March, 1941.

THOMAS VIRCIGLIO,

Thomas Virciglio, Notary Public, Bronx Co. Clk's.
No. 9, Reg. [Illegible]

Form No. 1

State of New York,

County of Bronx—ss.

No. 30034

I, Michael B. McHugh, Clerk of the County of Bronx (and Clerk of the Supreme Court of said County, and Clerk of the County Court for said County, the same being Courts of Record, having by law a seal), Do Hereby Certify, That Thomas Virciglio, whose name is subscribed to the certificate of acknowledgment, proof, affidavit or deposition of the annexed instrument and thereon written, was on the day of the date thereof a Notary Public within and for, and residing in said County, duly commissioned, qualified and sworn, having full power and authority by the laws of said State to take the acknowledgments of deeds or conveyances for lands, tenements and hereditaments in said State, and certify to same; also to administer oaths, to take depositions out of court, and to give certificates thereof; that full faith and credit may, and ought to be given to his official acts and attestations; that I have compared the signature on file in this office and verily believe that the signature of said certificate of acknowledgment, proof, affidavit or deposition, is his

genuine official signature as appears by the records of this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, this 20 day of March, 1941.

MICHAEL B. McHUGH,
Clerk.

[Endorsed]: Filed April 16, 1941. [19]

In the District Court of the United States, Southern
District of California, Central Division

No. 1490 B. H.

ROSE PAPANTONIO, suing in her own behalf as
a shareholder of TRANSAMERICA CORPO-
RATION and in behalf of all other sharehold-
ers of said corporation similarly situated,
Plaintiff,

vs.

AMADEO P. GIANNINI; L. M. GIANNINI;
A. H. GIANNINI; AMADEO P. GIANNINI,
As Executor of the Last Will and Testament of
VIRGIL D. GIANNINI, Deceased; BANK
OF AMERICA NATIONAL TRUST & SAV-
INGS ASSOCIATION, a national banking
association, as Administrator-With-The-Will-
Annexed of the Estate of JOHN M. GRANT,
Deceased; GORDON GRAY; O. D. HAMLIN;
T. W. HARRIS; A. P. JACOBS; F. G.

STEVENOT; RUSS AVERY; P. A. BRICCA, GEORGE J. DE MARTINI; W. N. LAGOMARSINO; A. J. SCAMPINI, WILLIAM E. BLAUER; LEON BOCQUERAZ; E. H. CLARK; CHARLES N. HAWKINS; W. F. MORRISON; A. J. MOUNT; ALFRED E. SPARBORO; CHESTER H. LOVELAND; P. C. HALE; JAMES A. BACIGALUPI; ARMANDO PEDRINI; GEORGE A. WEBSTER; E. J. NOLAN; C. R. BELL W. W. GARTHWAITE; GEORGE N. ARMSBY; LOUIS FERRARI; V. SCIALOJA; THEODORE M. STUART; HERBERT E. WHITE; CHARLES DE Y. ELKUS, WILLIAM S. HOELSCHER, CLIFFORD P. HOFFMAN, C. J. SMITH, VERNON C. WALSTON, AMADEO P. GIANNINI, L. M. GIANNINI, and CLAIRE GIANNINI HOFFMAN, transacting business as co-partners under the firm name and style of WALSTON & CO., and AMADEO P. GIANNINI, as the Executor of the Last Will and Testament of VIRGIL D. GIANNINI, a deceased member of said co-partnership; WALSTON & CO., a co-partnership; TRANSAMERICA CORPORATION, a corporation; [21] JOHN ONE; JOHN TWO; JOHN THREE; JOHN FOUR; JOHN FIVE; JOHN SIX; JOHN SEVEN; JOHN EIGHT; JOHN NINE; JOHN TEN; JANE ONE; JANE TWO; JANE THREE; JANE FOUR; JANE FIVE; JANE SIX; JANE SEVEN; JANE EIGHT; JANE NINE;

JANE TEN; ONE COMPANY, a corporation; TWO COMPANY, a corporation; THREE COMPANY, a corporation; FOUR COMPANY, a corporation; FIVE COMPANY, a corporation; SIX COMPANY, a corporation; SEVEN COMPANY, a corporation; EIGHT COMPANY, a corporation; NINE COMPANY, a corporation; TEN COMPANY, a corporation; JOHN DOE, RICHARD ROE, JANE DOE and JANE ROE, transacting business as co-partners under the firm name and style of DOE & ROE COMPANY; and DOE & ROE COMPANY, a co-partnership,
Defendants.

FIRST AMENDED COMPLAINT

Comes Now the above named plaintiff complaining of the above named defendants, and for her cause of action alleges upon information and belief, except as to paragraphs III, V, XIX, and XLIV, which plaintiff alleges upon knowledge, as follows:

I.

Defendant Transamerica Corporation has been since on or about the 11th day of October, 1928, and still is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and at all times mentioned herein transacting business within the State of California, having its principal office and place of business in said state in the City and County of San Francisco.

II.

Defendant Transamerica Corporation at all times mentioned herein was and now is engaged in a general business of acquiring, holding, owning, controlling, and operating other corporations and associations engaged in the banking, investment, brokerage, real estate and other businesses, among others including the following: [22] Bank of America National Trust & Savings Association, a national banking association; Transamerica General Corporation, a corporation; Pacific Coast Mortgage Company, a corporation; Western States Corporation, a corporation; Associated American Distributors, a corporation; Bank of America Company, a corporation; Transamerica Service Corporation, a corporation; Service Corporation, a corporation; Intercoast Trading Company, a corporation; California Lands, Inc., a corporation; Capitol Co., a corporation; Bankitaly Company of America, a corporation; Inter-American Corporation, a corporation; American Brokerage, Inc., a corporation; Corporation of America, a corporation; Occidental Life Insurance Co., a corporation; Pacific National Fire Insurance Co., a corporation; Commercial Holding Fire Insurance Co., a corporation; Transamerica Bank Holding Co., a corporation; Inter-Continental Corporation, a corporation.

III.

Plaintiff is and at all times herein mentioned since on or about the 7th day of March, 1929, has been a shareholder of defendant Transamerica Corpora-

tion, and as such institutes this action on behalf of herself, said corporation, and all other shareholders thereof similarly situated.

IV.

Bank of America National Trust & Savings Association, a national banking association, sued as a defendant herein as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, deceased, is, and at all times mentioned herein was, a national banking association duly organized, acting and existing, under and by virtue of the laws of the United States, with its principal offices and places of business in the City and County of San Francisco, and the City of Los Angeles, County of Los Angeles, [23] in the State of California, and then and there duly authorized to and engaged and engaging in a general banking and trust company business.

V.

Plaintiff now is, and at all times mentioned herein was, a citizen and resident of the State of New York.

VI. and VII.

Defendant Transamerica Corporation, a corporation, is and at all times mentioned herein was, a citizen and resident of the State of Delaware.

VIII.

Defendant co-partnership Walston & Co., is, and at all times mentioned herein was, a co-partnership composed of two or more persons associated and transacting business under said common name, the

members thereof being the individual defendants herein named, to wit: Charles De Y. Elkus, Vernon C. Walston, William S. Hoelscher, C. J. Smith, Clifford P. Hoffman, Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman, and Virgil D. Giannini, now deceased.

IX.

Defendant Walston & Co., a co-partnership is, and at all times mentioned herein was, engaged in a security brokerage business in the State of California, with its principal office and place of business in the City and County of San Francisco, and at all such times was and now is a citizen and resident of the State of California.

X.

This plaintiff is ignorant of the true names of the defendants designated and sued herein by and under fictitious names, and for that reason they are sued herein under fictitious names; [24] and plaintiff prays that when their true names are ascertained that they may be inserted herein, and that they may thereupon and thereafter be proceeded against in all subsequent proceedings in this action under their true names.

The aforesaid persons and associations sued herein as defendants under fictitious names, and each of them, participated with the other defendants in all and singular the acts and wrongs herein alleged and complained of.

XI.

Each and all of the individual defendants named herein are citizens and residents of the State of California. Defendants, A. H. Giannini, Russ Avery and C. R. Bell all reside in Los Angeles County, and W. N. Lagomarsino resides in the County of Ventura, in said state; defendant Theodore M. Stuart resides in the County of Fresno, and defendant Gordon Gray resides in the County of San Diego, in said state.

XII.

On or about the 28th day of April, 1938, the aforesaid Virgil D. Giannini mentioned in paragraph VIII herein, died testate in the City and County of San Francisco, State of California, and thereafter the aforesaid defendant, Amadeo P. Giannini, was appointed the Executor of his Last Will and Testament and estate, and thereupon duly qualified as such Executor and has ever since been and still is acting as such.

XIII.

On or about the 25th day of March, 1941, the aforesaid John M. Grant, mentioned and named in paragraph XX hereof, died testate in the City and County of San Francisco, State of California, and thereafter the defendant, Bank of America National Trust & Savings Association, a national banking association, was duly appointed the Administrator-With-The-Will-Annexed of his estate, and thereupon duly qualified as such Administrator, and ever [25] since has been and still is acting as such.

XIV.

Defendant Amadeo P. Giannini, as Executor of the Last Will and Testament of Virgil D. Giannini, Deceased, is, and at all times mentioned herein was, a citizen and resident of the State of California.

XV.

Defendant Bank of America National Trust & Savings Association, a national banking association, as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, Deceased, is, and at all times mentioned herein was, a citizen and resident of the State of California.

XVI.

The jurisdiction of this Court depends upon a diversity of citizenship between the plaintiff and the defendants.

XVII.

This action is not a collusive one instituted for the purpose of conferring on a Court of the United States jurisdiction of an action of which it would not otherwise have cognizance.

XVIII.

The matter in controversy, exclusive of interests and costs, exceeds the sum or value of Three Thousand and no/100 Dollars (\$3,000.00).

XIX.

Plaintiff was a shareholder of the defendant, Transamerica Corporation, at the time of each and all of the transactions of which she complains herein.

XX.

The following named individual defendants herein were each duly elected a member of the Board of Directors and officers of the defendant Transamerica Corporation, and accepted and assumed the corporate powers, duties and liabilities of such [26] offices, during the approximate times and periods as follows, a more definite or certain statement thereof plaintiff being unable to set forth:

Name of Directors	Held Office			Held Office		
	From	On	Or About	To	On	Or About
(1,4)						
Amadeo P. Giannini	Oct.	11,	1928	Feb.	14,	1931
(4)						
Amadeo P. Giannini	Mar.	31,	1932			1940
(1)						
L. M. Giannini	Feb.	8,	1929	Feb.	14,	1931
L. M. Gianinni	March	29,	1933			1940
(6)						
A. H. Giannini	February,	1929		Feb. 14,	1930	
	(Also Vice President in 1928)					
(1)						
John M. Grant	March	30,	1932			1940
Gordon Gray	March	30,	1932			1940
O. D. Hamlin	March	30,	1932			1940
T. M. Harris	March	30,	1932			1940
F. G. Stevenot	March	30,	1932			1939
Russ Avery	March	30,	1932			1938
P. A. Bricca	March	30,	1932			1940
George J. De Martini	March	30,	1932			1940
W. M. Lagomarsino	March	30,	1932			1940
A. J. Scampini	March	30,	1932			1938
Wm. E. Blauer	Feb.	8,	1929	Feb.	14,	1931
Leon Bocqueraz	Feb.	8,	1929	Feb.	14,	1931
E. H. Clark	Feb.	8,	1929	Feb.	14,	1931
Charles N. Hawkins	Feb.	8,	1929	Feb.	14,	1931
W. F. Morrish	Feb.	8,	1929	Feb.	14,	1931

Name of Directors	Held Office	Held Office
	From On Or About	To On Or About
(6)		
A. J. Mount	Feb. 8, 1929	Feb. 14, 1931
Alfred E. Sparboro	Feb. 8, 1929	Feb. 14, 1931
Chester E. Loveland	Feb. 8, 1932	Mar. 30, 1933
(6)		
P. C. Hale	Oct. 11, 1928	Feb. 14, 1931
		[27]
(1, 6, 4½)		
James A. Bacigalupi	Oct. 11, 1928	Mar. 31, 1931
(6)		
Armando Pedrini	Feb. 8, 1929	Mar. 30, 1933
(6) George A. Webster	Feb. 8, 1930	Feb. 14, 1931
E. J. Nolan	Feb. 28, 1929	Feb. 14, 1931
(6)		
C. R. Bell	Feb. 8, 1929	Feb. 14, 1931
W. W. Garthwaite	Feb. 8, 1929	Feb. 14, 1931
George Armsby	Feb. 14, 1930	Mar. 31, 1932
Louis Ferrari	Feb. 8, 1930	Feb. 14, 1931
V. C. Scialoja	Feb. 8, 1931	Mar. 29, 1934
Theodore M. Stuart	Mar. 31, 1932	1939
Herbert W. White	Mar. 31, 1932	1939

(1) Preceding the names of any of the foregoing directors indicates that that individual was also President of Transamerica Corporation during a portion of the period indicated.

(2) Preceding the names of any of the foregoing directors indicates that that individual was also Chairman of the Board of Directors of Transamerica Corporation during a portion of the period indicated.

(3) Preceding the names of any of the foregoing directors indicates that that individual was also Chairman of the Executive Committee of the Board of Directors of Transamerica Corporation during a portion of the period indicated.

(4) Preceding the names of any of the foregoing directors indicates that that individual was also Chairman of the Advisory Committee of the Board of Directors of Transamerica Corporation during a portion of the period indicated.

(4½) Preceding the names of any of the foregoing directors indicates that that individual was also Vice Chairman [28] of the Advisory Committee of the Board of Directors of Transamerica Corporation during a portion of the period indicated.

(5) Preceding the names of any of the foregoing directors indicates that that individual was also Executive Vice President of Transamerica Corporation during a portion of the period indicated.

(6) Preceding the names of any of the foregoing directors indicates that that individual was also Vice President of Transamerica Corporation during a portion of the period indicated.

(7) Preceding the names of any of the foregoing directors indicates that that individual was also Secretary of Transamerica Corporation during a portion of the period indicated.

(8) Preceding the names of any of the foregoing directors indicates that that individual was also Treasurer of Transamerica Corporation during a portion of the period indicated.

XXI.

At and during all of the times mentioned herein defendants Amadeo P. Giannini, L. M. Giannini and John M. Grant, now deceased, by and through stock ownership, proxies, and various other means and

devices with respect to which plaintiff is unable to make a more definite statement, selected and named the officers and members of the Board of Directors of defendant Transamerica Corporation, and controlled, dominated and determined its entire business policies and affairs.

With respect to said directors and officers selected and named, as aforesaid, plaintiff alleges that in each and all of the corporate transactions herein mentioned such defendant directors and officers and each of them did not at any time exercise any independent judgment in considering or determining corporate action with respect to such transactions or any or either of them, but on the other hand did at all times in the performance [29] of their official functions respecting such transactions, and each and all thereof, knowingly permit their official acts and conduct to be dictated, controlled and dominated by said defendants, Amadeo P. Giannini, L. M. Giannini and John M. Grant, Deceased, for the purpose of enhancing the personal and individual interests of each of said defendants and said persons to the detriment of defendant Transamerica Corporation, and its shareholders, as hereinafter more particularly set forth.

XXII.

On or about the 10th day of June, 1919, defendants Amadeo P. Giannini, P. C. Hale and James A. Bacigalupi organized and caused to be incorporated under and by virtue of the laws of the State of New York a corporation named and hereinafter

referred to as Bancitaly Corporation. Said corporation was organized for the purpose of engaging in a general business of acquiring, holding, owning, controlling and operating various other corporations and associations. The three defendants hereinbefore in this paragraph referred to, together with other persons, acted as members of the Board of Directors of said corporation upon its organization as aforesaid. On or about the 24th day of April, 1923, said corporation was duly authorized to transact business in the State of California, and did thereafter engage in a general business of acquiring, holding, owning, controlling and operating various other corporations and associations, the names of such corporations and associations and the precise nature of their respective businesses being to plaintiff unknown.

XXIII.

Said Bancitaly Corporation, after its organization, as aforesaid, continued to actively function and engage in the business for which it was created until on or about the time that defendant Transamerica Corporation was organized as [30] hereinbefore set forth in paragraph I hereof, and during all of said period defendant Amadeo P. Giannini was the President of said Bancitaly Corporation, and a member of its Board of Directors, actively engaged in the exercise of the duties and functions pertaining to said offices, and the remaining members of the Board of Directors and other officials of said corporation were, and each of them was, at all such times a dummy agent and alter ego of said

defendant Amadeo P. Giannini, and as such controlled and dominated by him for the purpose of enhancing his own personal and individual interests to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned.

XXIV.

That on or about the 13th day of April, 1927, said Bancitaly Corporation, acting by and through its said Board of Directors referred to in the preceding paragraph hereof, made and entered into a written agreement with defendant Amadeo P. Giannini to the effect that for his personal services rendered and to be rendered as President of said corporation he should receive and be paid five per cent (5%) of the net profits of said corporation per annum, with a guaranteed minimum of One Hundred Thousand Dollars (\$100,000.00) per annum, commencing January 1, 1927, in lieu of salary.

Plaintiff alleges that the execution and making of said salary agreement was beyond the scope of the corporate powers of said Bancitaly Corporation, and in excess of the authority of its officials and Board of Directors, and was caused to be made by said Amadeo P. Giannini, and knowingly permitted by the remaining members of the Board of Directors and other officials of said Bancitaly Corporation, each and all of whom intended thereby to enhance the personal and individual interests of and unjustly enrich the said defendant, Amadeo P. Giannini, to the detriment of said corporation and its shareholders in the particulars [31] hereinafter mentioned.

XXV.

Pursuant to said salary agreement mentioned in paragraph XXIV hereof, and for a certain period ending on or about January 1, 1929, with respect to which plaintiff is unable to make a more definite statement, defendant Amadeo P. Giannini caused, and the remaining members of the Board of Directors and other officials of said Bancitaly Corporation knowingly permitted, certain entries and records to be made and entered upon the corporate records and books of account of said corporation as purported credits in favor of said defendant, Amadeo P. Giannini, in substantial sums, aggregating approximately Nine Hundred Twenty-five Thousand Dollars (\$925,000.00), and, as such, to appear upon the corporate records and books of account as purported liabilities of said corporation, with respect to all of which plaintiff is unable to make a more definite or certain statement concerning the dates and amounts of the several items involved in such entries and records.

Plaintiff further alleges with respect to the said entries and records, aforesaid, that the total credit and each item thereof so entered and recorded upon the corporate records and books of account of said Bancitaly Corporation in favor of said defendant, Amadeo P. Giannini, was and is false and untrue, in that the same does not truly and correctly represent five per cent (5%) of the actual and true net profits of said corporation for said period or any part thereof, but on the other hand was and is in excess thereof, and by said defendant and said direc-

tors and officers knowingly computed upon false, fictitious, inflated and untrue book profits, the precise extent thereof being to plaintiff unknown, and all of which was so caused to be done by said defendant, Amadeo P. Giannini, and knowingly permitted by the remaining members of the Board of Directors and [32] other officials of said Bancitaly Corporation, with the intent of each of them to thereby enhance the personal and individual interests of and unjustly enrich the said defendant, Amadeo P. Giannini, to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned.

XXVI.

On or about the 27th day of December, 1928, defendant Amadeo P. Giannini caused, and his co-defendant directors and officers of defendant Transamerica Corporation knowingly permitted, said defendant Transamerica Corporation by mesne contracts and other instruments in writing, the precise nature of which being to plaintiff unknown, to acquire all of the assets of Bancitaly Corporation hereinbefore mentioned, and to assume as its own obligations all of its liabilities, including the written salary agreement set forth in paragraph XXIV hereof, and the purported liabilities evidenced upon the corporate records and books of account of said corporation by the credit entries as set forth in paragraph XXV hereof, all of which was so caused and permitted by said defendants with the intent of each of them to enhance the personal and individual interests of and unjustly enrich said defendant,

Amadeo P. Giannini, to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned.

XXVII.

During a period commencing on or about the 1st day of January, 1927, and ending on or about the 1st day of January, 1930, a more certain or more definite statement thereof plaintiff being unable to set forth, pursuant to the purported corporate liability evidenced by said salary agreement set forth in paragraph XXIV hereof and assumed by defendant Transamerica Corporation in the manner and for the purposes heretofore mentioned in paragraph XXV hereof, said defendant, Amadeo P. [33] Giannini, from time to time caused, and his co-defendant directors and officers of said defendant, Transamerica Corporation, knowingly permitted, certain entries and records to be made and entered upon the corporate records and books of account of said corporation as purported credits in favor of said defendant, Amadeo P. Giannini, in substantial sums, aggregating approximately not less than Five Million Dollars (\$5,000,000.00), and, as such to appear upon the corporate records and books of account of said corporation as purported liabilities of said corporation, with respect to all of which plaintiff is unable to make a more definite or certain statement concerning the dates and amounts of the several items involved in such entries and records.

Plaintiff further alleges with respect to the said entries and records aforesaid that the total credit and each item thereof so entered and recorded upon

the corporate records and books of account of said defendant, Transamerica Corporation, in favor of said defendant, Amadeo P. Giannini, was and is false and untrue in that the same does not truly and correctly represent five per cent (5%) of the actual and true net profits of said corporation for said period or any part thereof, but on the other hand was and is in excess thereof, and by said defendants, and each of them, knowingly computed upon false, fictitious, inflated and untrue book profits, the precise extent thereof being to plaintiff unknown, and all of which was so caused to be done by said defendant, Amadeo P. Giannini, and knowingly permitted by his co-defendant directors and officers of said defendant Transamerica Corporation, with the intent of each of them to thereby enhance the personal and individual interests of, and unjustly enrich the said defendant, Amadeo P. Giannini, to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned. [34]

XXVIII.

With respect to the credits and each item thereof in favor of defendant Amadeo P. Giannini, appearing as a corporate liability upon the books of account of the Bancitaly Corporation, as set forth in paragraph XXV hereof, and the credits and each item thereof in favor of said defendant appearing as a corporate liability upon the books of account of defendant Transamerica Corporation, as set forth in paragraph XXVII hereof, plaintiff alleges that the same, and each of the items thereof, evi-

dence sums of money purportedly payable to said defendant, Amadeo P. Giannini, which were by him unearned, and for which he gave no consideration, and which constituted unauthorized and illegal corporate liabilities of the said defendant, Transamerica Corporation.

XXIX.

During a period commencing on or about the 1st day of January, 1927, and ending on or about the 1st day of January, 1939, the defendant Amadeo P. Giannini caused, and his co-defendant directors and officers of said Transamerica Corporation herein named knowingly permitted, the said corporation to pay to said defendant, Amadeo P. Giannini, from time to time substantial sums of money aggregating not less than approximately Five Million Dollars (\$5,000,000.00) on account of and by reason of said wrongful credits heretofore set forth in paragraphs XXV and XXVII, the precise amounts and the days and dates of such payments being to plaintiff unknown, except with respect to a sum not less than approximately Seven Hundred Seventy-eight Thousand, Four Hundred Seventy Dollars, Two Cents (\$778,470.02), which plaintiff alleges was paid by defendant Transamerica Corporation in the manner aforesaid to the said defendant, Amadeo P. Giannini, in the approximate sums and amounts as follows: [35]

\$134,826.58 in and during the year 1932;

\$132,896.92 in and during the year 1933;

\$100,596.24 in and during the year 1934;

\$351,952.03 in and during the year 1935;

\$ 65,914.28 in and during the year 1936;
\$ 58,284.37 in and during the year 1937; and
\$ 34,000.00 in and during the year 1938;

by reason of all of which defendant Amadeo P. Giannini was from the funds and assets of defendant Transamerica Corporation unjustly enriched to the detriment of said corporation and its shareholders to the extent of at least approximately Five Million Dollars (\$5,000,000.00), the precise sum and amount thereof being to plaintiff unknown, and concerning all of which plaintiff alleges that each and all of the payments of said sums of money as herein set forth were knowingly caused and permitted to be made by said defendants with the intent of each of them to enhance the personal and individual interests of and unjustly enrich the said defendant, Amadeo P. Giannini, to the detriment of said corporation and its shareholders.

XXX.

Plaintiff alleges that during all of the times herein mentioned and involving all of the transactions herein mentioned the defendants, Amadeo P. Giannini, L. M. Giannini and John M. Grant, Deceased, caused, and their co-defendant directors knowingly permitted, such transactions and the general business and affairs of defendant, Transamerica Corporation, and its assets and liabilities to appear to be reflected by records and books of account kept, maintained and operated, by an involved, intricate and complex system of accounting in conflict with the usual, customary, proper and recognized principles of the science of accounting, and entirely beyond the knowledge and understanding of the

plaintiff with respect to such subject, and that the [36] corporate transactions heretofore set forth involved in such corporate records and books of account, with respect to the assets and liabilities of the corporation, as set forth in paragraphs XXV, XXVI and XXVII hereof, and with respect to the payments and disbursements involved and set forth in paragraph XXIX hereof, were covered, disguised and concealed beyond discovery by entries and records made under and by false, misleading and untrue names and designations, not required by and in conflict with the usual, customary, proper and recognized principles of accounting procedure.

XXXI.

On or about the 17th day of December, 1932, at a time when defendant Transamerica Corporation was actively engaged in a substantial and profitable security brokerage business, defendants Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman, and Virgil D. Giannini (now deceased), for the purpose and with the intent of each of them of enhancing their own respective personal and individual interests to the detriment of defendant Transamerica Corporation, caused to be organized and created a certain co-partnership under the name and style of Walston & Co. as set forth in paragraphs VIII and IX hereof, the other individual members thereof, namely, defendants Charles De Y. Elkus, Vernon C. Walston, William S. Hoelcher, C. J. Smith and Clifford P. Hoffman, and each of them, being also then and there, and at all times

thereafter, the duly appointed secret trustee, agent and representative, of defendants Amadeo P. Giannini, L. M. Giannini, Claire G. Hoffman, and Virgil D. Giannini (now deceased), with respect to the conduct and all operations of the business and affairs of the defendant co-partnership and concerning their several interests therein.

Plaintiff alleges that at all times mentioned herein from and after the organization thereof the entire business and [37] affairs of said defendant co-partnership was owned, controlled and directed by said defendants, Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman, and said Virgil D. Giannini (now deceased), and as such constituted and was the alter ego of each of said defendants.

XXXII.

At all times after the organization of said defendant co-partnership, Walston & Co., in the manner and for the purposes set forth in paragraph XXXI hereof, defendants Amadeo P. Giannini and L. M. Giannini caused, and their co-defendant directors and officers of defendant Transamerica Corporation knowingly permitted said defendant Transamerica Corporation to divert and transfer all of its said security brokerage business, and of which said defendants then and there exercised management and control, to said defendant co-partnership, Walston & Co., all of which was from time to time during said years accomplished by said defendants and their co-defendant officers and directors, with the intent of each of them to enhance

the personal and individual interests of defendants, Amadeo P. Giannini, L. M. Giannini, Virgil D. Giannini (now deceased) and Claire Giannini Hoffman, to the detriment of the defendant, Transamerica Corporation and its shareholders.

XXXIII.

In and during the years 1932, 1933, 1934, 1935, 1936, 1937, and 1938, defendants Amadeo P. Giannini and L. M. Giannini, and each of them, caused, and their co-defendant directors and officers of defendant Transamerica Corporation knowingly permitted, said defendant corporation to unnecessarily pay from its funds and assets to said defendant co-partnership, Walston & Co., large and substantial sums of money as brokerage fees for services with respect to corporate stock transactions derived from the business so diverted which belonged to defendant Transamerica Corporation, [38] and also substantial sums of money for use as capital for said defendant co-partnership and other purposes, with respect to all of which plaintiff states that the precise dates, details, and amounts of such payments were and are unknown to the plaintiff, but concerning which plaintiff further alleges that the same aggregated a total sum of not less than approximately Five Hundred Thousand Dollars (\$500,000.00), and all of which was received and accepted by said defendant co-partnership, Walston & Co., as the alter ego and dummy agent of and for the use and benefit of said defendants, Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman,

and Virgil D. Giannini (now deceased), and all of which was thereafter from time to time divided and disbursed by said defendant co-partnership, Walston & Co., to said last named defendants, and said Virgil D. Giannini (now deceased), and by reason of which said defendants and said Virgil D. Giannini (now deceased), and each of them, were from the funds and assets of defendant Transamerica Corporation unjustly enriched to the detriment of said corporation and its shareholders in the sum and amount and to the extent of at least approximately Five Hundred Thousand Dollars (\$500,000.00), the precise sum and amount thereof being to plaintiff unknown.

Concerning all of said payments from the funds and assets of defendant Transamerica Corporation to the defendant co-partnership, Walston & Co., in the manner and for the purposes as hereinbefore set forth, plaintiff alleges that each and all thereof were caused to be made by the said defendants, Amadeo P. Giannini, L. M. Giannini, and knowingly permitted by all their co-defendant directors and officers of defendant Transamerica Corporation, with the intent of each of them to enhance the personal and individual interests of and unjustly enrich said defendants, Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman, and Virgil D. Giannini (now deceased), to the detriment of said [39] corporation and its shareholders.

XXXIV.

All of the transactions mentioned and set forth in paragraphs XXXI, XXXII and XXXIII

hereof concerning the organization and creation of defendant co-partnership, Walston & Co., and particularly the partnership, financial and other interests therein owned, controlled and held by the defendants, Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman and Virgil D. Giannini (now deceased), and the division and distribution of the profits of said defendant co-partnership to said Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman, and Virgil D. Giannini (now deceased), were by defendants Amadeo P. Giannini and L. M. Giannini and their co-defendant directors and officers withheld from the corporate records of defendant Transamerica Corporation, and at all times evidenced and concealed by secret and private agreements and transactions of which plaintiff had no knowledge or information of any kind or character, the precise nature and character thereof plaintiff being unable to more definitely set forth.

XXXV.

During the year 1932, the precise date being to plaintiff unknown, and at all times thereafter, as mentioned herein, the Bankitaly Mortgage Company was and now is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business in the City of San Francisco, and there operating and conducting a general mortgage, real estate, and investment business, including speculative operations in the capital stock of defendant Transamerica Corporation by purchasing and sell-

ing the same upon the various stock exchanges of the United States.

During the year 1932, the precise date of which plaintiff is unable to set forth, defendants Amadeo P. Giannini, L. M. [40] Giannini and Virgil D. Giannini (now deceased), by divers means and methods unknown to plaintiff, organized, created and maintained a certain private and secret trust syndicate, having for its purpose speculative operations in the capital stock of defendant Transamerica Corporation by selling and purchasing the same upon the various stock exchanges of the United States, wherein and whereby one Charles J. Smith and one Margaret Mallory were the trustees thereof, and said defendants Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), were the beneficiaries.

XXXVI.

During the year 1933, the precise date of which plaintiff is unable to set forth, defendants Amadeo P. Giannini, L. M. Giannini and John M. Grant, together with their co-defendant directors and officers of defendant Transamerica Corporation, caused Interstate Trading Company, a corporation heretofore mentioned in paragraph II hereof, to change its name to Associated American Distributors, Inc., and thereafter during the years 1934, 1935, 1936, aid and assist defendants Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), in their speculative stock operations by engaging in a general business of soliciting orders

from the general public for the purchase of the capital stock of defendant Transamerica Corporation, through defendant co-partnership, Walston & Co., upon the various stock exchanges of the United States.

XXXVII.

During the year 1932, the precise days and dates thereof being to plaintiff unknown, defendants Amadeo P. Giannini and L. M. Giannini, with the intent of each of them to enhance their respective personal and individual interests to the detriment of defendant Transamerica Corporation and its shareholders, and with the knowledge and consent of their co-defendant directors and [41] officers of said defendant, Transamerica Corporation, acquired and used the funds and assets of said defendant corporation in large sums and amounts, and the private and confidential knowledge and information acquired in their said capacity as officers and directors thereof, for speculative operations in the purchase and sale of the capital stock of defendant Transamerica Corporation upon the various stock exchanges in the United States in the particulars hereinafter set forth.

XXXVIII.

In and during the year 1932, the precise date of which being to the plaintiff unknown, defendants Amadeo P. Giannini and L. M. Giannini caused, and their co-defendant directors and officers knowingly permitted, defendant Transamerica Corporation to pay and advance from its funds and assets

substantial sums of money, the precise amounts thereof being to plaintiff unknown, but aggregating a total of not less than approximately One Million Five Hundred Thousand Dollars (\$1,500,000.00) to defendants, Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), which was by them used and disbursed for the purchase and acquirement of the controlling interest in the capital stock of the said Bankitaly Mortgage Company, heretofore mentioned in paragraph XXXV hereof, and for the purpose of furnishing capital for the further speculative stock operations and business of said Bankitaly Mortgage Company, the said defendants, Amadeo P. Giannini and L. M. Giannini, caused, and their co-defendant directors and officers knowingly permitted, defendant Transamerica Corporation to pay and advance from its funds and assets substantial sums of money, the precise amounts thereof being to plaintiff unknown, but aggregating a total of not less than approximately One Million Five Hundred Thousand Dollars (\$1,500,000.00) to, and into the treasury of said Bankitaly Mortgage Company.

Plaintiff alleges that each and all of the said [42] payments and advances of the funds and assets of defendant Transamerica Corporation above set forth were caused to be made by said defendants Amadeo P. Giannini and L. M. Giannini, and knowingly permitted by their co-defendant directors and officers, with the intent of each of them to enhance the respective personal and individual interests of the said defendants, Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased),

to the detriment of said defendant, Transamerica Corporation, and its shareholders.

With further respect to the payments and advancements of the funds and assets of defendant Transamerica Corporation to defendants Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), as heretofore set forth, and with respect to the payments and advancements of the funds and assets of defendant Transamerica Corporation to and into the treasury of the said Bankitaly Mortgage Company, as heretofore set forth, plaintiff alleges that the precise means and methods used to accomplish each and all of such payments and advancements were and are unknown to the plaintiff, but alleges that each and all of such transactions were not open, nor in the usual course of business, but on the other hand were consummated secretly by and through purported loans and other transactions with, to, by, and through secret dummy agents, representatives, corporations and associations of the defendants, Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), including one A. O. Stewart and A. P. Giannini Co., a corporation.

XXXIX.

During the year 1932, the precise date thereof being to the plaintiff unknown, defendants Amadeo P. Giannini, L. M. Giannini and Virgil D. Giannini (now deceased), for the purpose and with the intent of further secreting and concealing their respective interests in the ownership of the said

Bankitaly [43] Mortgage Company, mentioned in paragraph XXXV hereof, changed and altered its name to Pacific Coast Mortgage Company, mentioned in Paragraph II hereof, and thereafter during the years 1933, 1934, 1935, and 1936, by and through said corporation, operated and engaged in a business of speculating in the capital stock of defendant Transamerica Corporation by purchasing and selling the same upon the various stock exchanges of the United States, and that in and during said period of time, the precise days and dates thereof plaintiff being unable to state, said Pacific Coast Mortgage Company earned and collected a large and substantial profit, the precise amount of which being to plaintiff unknown, but aggregating a total of not less than approximately Two Million Dollars (\$2,000,000.00), which was from time to time paid to and received and accepted by said defendants, Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), by reason of which said defendants and said Virgil D. Giannini (now deceased) were, and each of them was, unjustly enriched to the detriment of defendant Transamerica Corporation and its shareholders in the sum and amount and to the extent of at least approximately Two Million Dollars (\$2,000,000.00), the precise sum and amount thereof being to plaintiff unknown.

XL.

In and during the years 1933, 1934, and 1935, the precise dates of which being to plaintiff unknown, defendants Amadeo P. Giannini and L. M.

Giannini caused, and their co-defendant directors and officers of defendant Transamerica Corporation knowingly permitted said defendant, Transamerica Corporation, to pay and advance from its funds and assets substantial sums of money, the precise amounts thereof being to plaintiff unknown, but aggregating a total of not less than approximately Three Million Dollars (\$3,000,000.00) to the said trustees, Charles J. Smith and Margaret Mallory, for use as [44] capital in operating and conducting the business and affairs of said private and secret trust syndicate, mentioned in paragraph XXXV hereof, and which was thereafter used by said trustees and said beneficiaries thereof for speculative operations in the purchase and sale of the capital stock of defendant Transamerica Corporation upon the various stock exchanges of the United States, in the particulars hereinafter set forth.

With respect to the payment and transfer of the funds and assets of defendant Transamerica Corporation to said trustees and into the treasury of said private and secret trust syndicate, as heretofore set forth, plaintiff alleges that the precise means and methods used to accomplish the same are unknown to the plaintiff, but that said transactions were not open nor in the usual course of business, but on the other hand, were consummated secretly by and through purported loans, and other transactions, with, to, by, and through secret dummy agents and representatives of said defendants, Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased).

With further respect to the payments and advancements of the funds and assets of defendant Transamerica Corporation to the said Charles J. Smith, and Margaret Mallory for use as capital in operating and conducting the business and affairs of said private and secret trust syndicate, plaintiff alleges that each and all of said payments and advances were caused to be made by said defendants, Amadeo P. Giannini and L. M. Giannini, and knowingly permitted by their co-defendant directors and officers, with the intent of each of them to enhance the respective personal and individual interests of defendants, Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), to the detriment of said defendant, Transamerica Corporation, and its shareholders.

XLI.

In and during the years 1933, 1934, and 1935, defendants [45] Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), by said secret, private trust syndicate, operated and engaged in a business of speculating in the capital stock of defendant Transamerica Corporation by purchasing and selling the same upon the various stock exchanges of the United States, and that in and during the said period, the precise days and dates thereof plaintiff being unable to state, the said trust syndicate earned and collected a large and substantial profit, the precise amount of which being to plaintiff unknown, but aggregating a total of not less than approximately Seventy-five Thous-

and Dollars (\$75,000.00), which was paid to and received and accepted by said defendants, Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), by reason of which said defendants and said Virgil D. Giannini (now deceased), were and each of them was unjustly enriched to the detriment of defendant Transamerica Corporation and its shareholders in the sum and amount and to the extent of at least approximately Seventy-five Thousand Dollars (\$75,000.00), the precise sum and amount thereof being to plaintiff unknown.

XLII.

In and during the years 1933, 1934, 1935 and 1936, the defendants, Amadeo P. Giannini and L. M. Giannini, in continuing their secret and private speculative operations in the purchase and sale of the capital stock of defendant Transamerica Corporation upon the various stock exchanges of the United States by and through the use of said Pacific Coast Mortgage Company, a corporation, and said Malloy-Smith trust syndicate, also caused the said Associated American Distributors, Inc., a corporation, formerly Intercoast Trading Company, a corporation, to engage, in part, in the business of soliciting orders from the general public for the purchase of capital stock of defendant, Transamerica Corporation, by and through defendant co-partnership, Walston & Co., upon the various stock exchanges of the United [46] States, with respect to which plaintiff further alleges that said Associated American

Distributors, Inc., incurred large items of expense and suffered substantial losses in the operation of such business, the precise days, dates and amounts thereof being unknown to plaintiff, but aggregating a total sum of not less than approximately Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00), and from time to time in and during the years 1933, 1934, 1935, and 1936, the precise days and dates thereof plaintiff being unable to definitely state, the defendants Amadeo P. Giannini and L. M. Giannini caused, and their co-defendant officers and directors knowingly permitted, the funds and assets of the defendant Transamerica Corporation, in large sums and amounts, the precise extent thereof being unknown to plaintiff, but aggregating a total of not less than approximately Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00), to be appropriated, taken, and used to replace the expense incurred and the losses suffered by said Associated American Distributors, Inc., aforesaid, by then and there and from time to time paying and disbursing the same from the funds and assets of defendant Transamerica Corporation to said Associated American Distributors, Inc.

With respect to the payments and advancements of the funds and assets of defendant Transamerica Corporation to the said Associated American Distributors, Inc., above set forth, plaintiff alleges that each and all thereof were caused by defendants Amadeo P. Giannini and L. M. Giannini, and knowingly permitted by their co-defendant directors and officers of defendant Transamerica Corporation, with

the intent of each of them to enhance the personal and individual interests of said defendants Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), to the detriment of said defendant, Transamerica Corporation, and its shareholders. [47]

XLIII.

Except as herein otherwise set forth, all of the matters, things, acts, and transactions mentioned and set forth in paragraphs XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI and XLII relating to the Pacific Coast Mortgage Co., Associated American Distributors, Inc., and the Mallory-Smith trust syndicate, including the relationship to each thereof, of the defendants herein, Amadeo P. Giannini, L. M. Giannini, and Virgil D. Giannini (now deceased), and the account of their gains and profits therefrom were and each was at all times by said defendants and said Virgil D. Giannini (now deceased), withheld from the corporate records and books of account of defendant Transamerica Corporation, and do not appear therein; and the transfer and use of the corporate funds and assets of defendant Transamerica Corporation, as in said paragraphs of this complaint set forth, were upon the corporate records of said defendant corporation disguised, covered and concealed by false, fictitious, and misleading entries and records importing proper use and disposition thereof.

XLIV.

During all of the times mentioned herein the plaintiff had no knowledge, notice or information, of any

kind or character, with respect to any of the acts, matters, things, facts or transactions heretofore in this complaint set forth, or with respect to any irregularity or wrongful conduct of any kind or character of the defendants herein or any or either of them concerning their conduct in the operation of the assets or business or affairs of defendant Transamerica Corporation, but on the other hand, during all of such times, plaintiff had and reposed full and complete confidence in the integrity and good faith of defendant Amadeo P. Giannini and each and all of his co-defendant directors and officers of defendant Transamerica Corporation, [48] in the management, control and operation, of the assets, business and affairs thereof, until on or about the 27th day of April 1939, when, for the first time, it was called to plaintiff's attention that a certain contested quasi judicial proceeding then pending before the Securities and Exchange Commission of the United States involving an issue as to whether or not the defendant herein, Amadeo P. Giannini, had caused to be filed certain written statements, reports and other data, containing false and misleading information in support of certain applications for the registration of certain of the shares of the capital stock of Transamerica Corporation on various stock exchanges of the United States had developed certain evidence tending to establish suspicious circumstances indicating possible irregularities in the conduct of the business and affairs of said defendant, Transamerica Corporation, and by said defendant, Amadeo P. Giannini, and other defendant directors and officers

herein, and of which plaintiff had no prior notice, knowledge, or information of any kind or character whatsoever; and, with respect to such quasi judicial proceedings plaintiff further alleges that the said irregularities were therein developed only slowly by and through certain detailed examinations and audits of the corporate records and books of account of the defendant, Transamerica Corporation, and its many subsidiary corporations and associations, which were at all times maintained and kept in the manner set forth in paragraph XXX hereof, by expert accountants for and in behalf of said Commission, and were presented to said Commission through the testimony of unwilling and hostile witnesses as developed by experienced lawyers; and also concerning such quasi judicial proceedings plaintiff further alleges that the said issues therein are still being contested by the said defendant, Amadeo P. Giannini, and his associates therein, and that said controversy is still pending and undetermined. [49]

After being advised of the suspicious circumstances indicating possible irregularity in the conduct of the business and affairs of defendant, Transamerica Corporation, in the manner heretofore set forth, plaintiff not knowing the truth or falsity of such information and desiring to determine if actionable wrongs had in fact been committed in the management of the business and affairs of said defendant corporation, immediately proceeded to and has at all times ever since diligently investigated and attempted to ascertain the true and actual facts with respect to the transactions and wrongs herein

alleged, and thus far has been unable to fully complete her investigation, and is still proceeding therewith.

XLV.

Up to the time of the commencement of this action the great majority of the individual members of the board of directors and principal officers of defendant Transamerica Corporation continued to manage, control and operate, the business and affairs of said defendant corporation under the domination, control and direction, of the aforesaid defendants Amadeo P. Giannini and L. J. Giannini. The great majority of said members of said Board of Directors and said officers of said corporation are named and sued as defendants herein. With knowledge of such facts plaintiff has made no demand of said Board of Directors of said Transamerica Corporation to institute an action to redress the wrongs for which relief is sought herein, as such a suit to be effective and complete must be directed against them as such directors and officers, and such a demand by plaintiff as made would be and constitute a futile and idle act.

XLVI.

Plaintiff has no plain, speedy or adequate remedy at law. [50]

Wherefore, plaintiff prays for judgment and decree against the defendants, and each of them as follows:

(a) That a trust relationship between plaintiff and each of said defendants, and a trust relation-

ship between defendant Transamerica Corporation and said defendants be declared;

(b) That defendants, and each of them, render a complete true and correct, accounting of all their dealings and transactions with the assets, business and affairs, of defendant Transamerica Corporation, and all of their corporate acts and conduct as members of the Board of Directors and officers thereof concerning all of the transactions for which relief is sought herein;

(c) That upon such complete, true and correct accounting the court make and enter judgment and decree for plaintiff against said defendants, and each of them, in such sums and amounts to which plaintiff and the defendant Transamerica may be entitled under the law and evidence, amounting in all to a sum not less than Ten Million Dollars (\$10,000,000.00) with proper legal interest thereon;

(d) For costs and expenses incurred by the plaintiff in the prosecution of this action, and an allowance of a reasonable sum to be awarded to plaintiff's counsel as a fee for their services herein;

(e) And for such other and further equitable relief to which the plaintiff may be entitled under the pleadings and evidence herein.

VINCENT A. MARCO

PERCY V. CLIBBORN

HOMER N. BOARDMAN

JOSEPH A. RUSKAY

By VINCENT A. MARCO

Attorneys for Plaintiff [51]

State of New York,
County of Bronx—ss.

Rose Papantonio, being duly sworn, deposes and says she is the plaintiff in the within action; that she has read the foregoing complaint and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters she believes it to be true.

ROSE PAPANTONIO

Sworn to before me this 23rd day of December, 1941.

[Seal]

EDWARD PAPANTONIO

Notary Public, Bronx County. Bronx Co. Clk's No. 130, Reg. No. 131P43. N. Y. Co. Clk's No. 705, Reg. No. 3P432. Comm. expires March 30, 1943.

Form No. 1

No. 32564

State of New York,
County of Bronx—ss.

I, Michael B. McHugh, Clerk of the County of Bronx (and Clerk of the Supreme Court of said County, and Clerk of the County Court for said County, the same being Courts of Record, having by law a seal), Do Hereby Certify That Edward Papantonio whose name is subscribed to the certificate of acknowledgment, proof affidavit or deposition of the annexed instrument and thereon written, was on the day of the date thereof a Notary Public

within and for, and residing in said County, duly commissioned, qualified and sworn, having full power and authority by the laws of said State to take the acknowledgments of deeds or conveyances for lands, tenements and hereditaments in said State, and certify to same; also to administer oaths, to take depositions out of court, and to give certificates thereof; that full faith and credit may, and ought to be given to his official acts and attestations; that I have compared the signature on file in this office and verily believe that the signature of said certificate of acknowledgment, proof, affidavit or deposition, is his genuine official signature as appears by the records of this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, this 23 day of Dec., 1941.

MICHAEL B. McHUGH

[Seal]

Clerk

[Endorsed]: Filed Dec. 29, 1941. [52]

[Title of District Court and Cause.]

MOTIONS BY DEFENDANT AMADEO P. GIANNINI, INDIVIDUALLY AND AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF VIRGIL D. GIANNINI, DECEASED,

- (1) TO DISMISS THE ACTION;
- (2) FOR AN ORDER REQUIRING PLAINTIFF TO SEPARATELY STATE CAUSES OF ACTION IN SEPARATE COUNTS;
- (3) FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS, AND
- (4) TO STRIKE.

Defendant Amadeo P. Giannini, individually, defendant Amadeo P. Giannini, as an alleged co-partner of defendant Walston & Co., defendant Amadeo P. Giannini, as Executor of the Last Will and Testament of Virgil D. Giannini, Deceased, and defendant Amadeo P. Giannini, as the Executor of the Last Will [53] and Testament of Virgil D. Giannini, a deceased alleged member of said co-partnership, moves the court severally in each of the various capacities in which he is sued, as follows:

MOTION TO DISMISS

I. To dismiss the action because the First Amended Complaint fails to state a claim against defendant upon which relief can be granted.

MOTION FOR SEPARATE STATEMENT

II. For an order requiring plaintiff to state in separate counts the claims founded upon the following separate transactions:

First. The transaction, the gist of which appears in paragraphs XXII to XXX, inclusive, and in which it is alleged that defendant Amadeo P. Giannini, individually, received from defendant Transamerica Corporation and its predecessor, Bancitaly Corporation, the sum of approximately \$5,000,000.00 under a salary agreement between defendant Amadeo P. Giannini and Bancitaly Corporation and assumed by defendant Transamerica Corporation, that said salary agreement was ultra vires as to Bancitaly Corporation, that it was made and assumed by the respective Boards of Directors acting under the domination of defendant Amadeo P. Giannini, that the payments made were computed upon false and fictitious profits, and that no consideration was given by defendant Amadeo P. Giannini.

Second. The transaction, the gist of which appears in paragraphs XXXI to XXXIV, inclusive, and in which it is alleged that defendant Amadeo P. Giannini and another caused defendant Transamerica Corporation unnecessarily to pay to defendant Walston & Co., a co-partnership, the sum of approximately \$500,000.00 as brokerage fees and for use as capital, which money was paid and distributed by said co-partnership to the alleged partners thereof, including defendant Amadeo P. Giannini and said [54] Virgil D. Giannini, deceased.

Third. The transaction, the gist of which appears in paragraphs XXXV to XLIII, inclusive, and in respect to which it is alleged that defendant Amadeo P. Giannini and said Virgil D. Giannini, deceased, and others received substantial sums as profits from speculations carried on through Bank-Italy Mortgage Company, later Pacific Coast Mortgage Company, and a trust syndicate described as the "Mallory-Smith Trust Syndicate" in the aiding and abetting of which Associated American Distributors, Inc. incurred losses of approximately \$2,250,000.00, which losses defendant Amadeo P. Giannini and another caused defendant Transamerica Corporation to reimburse said Associated American Distributors, Inc.

This motion is made upon the ground that the First Amended Complaint unites and does not state in separate counts the several claims founded upon separate transactions or occurrences, in violation of the provisions of paragraph (b) of Rule 10 of the Federal Rules of Civil Procedure; that the defendants involved in said first transaction are not the same as the defendants involved in said second transaction or in said third transaction; that the defendants involved in said third transaction are not the same as the defendants involved in said second transaction; that plaintiff's alleged right to recover in behalf of Transamerica is based upon separate and different theories upon each of said three transactions; that a statement in separate counts of said three transactions will facilitate the clear presentation of the matters set forth,

and that such a separate statement will facilitate the presentation of the special defenses thereto of defendant Amadeo P. Giannini in the several capacities in which he is sued. [55]

MOTION FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS

III. For an order requiring plaintiff to make a more definite statement of, or a bill of particulars in respect to, the following matters, as to each of which defendant desires more definite particulars and in respect to each of which the First Amended Complaint is defective. Items 7, 8, 9 and 10 hereinafter set forth, as noted therein, involve allegations which defendant seeks to have stricken in his Motion to Strike (post). In respect to Items 7, 8, 9 and 10, this motion is made in the alternative and without prejudice to the Motion to Strike.

1. What is the number of shares of capital stock of defendant Transamerica Corporation of which plaintiff is the holder, as alleged in paragraph III (p. 3, lines 17-21), and what was the total number of issued and outstanding shares of capital stock of Transamerica Corporation on the date of the commencement of this action.

2. Whether plaintiff has been a shareholder of Transamerica only since on or about March 7, 1929, as alleged in paragraph III (p. 3, lines 17-21), or whether, as alleged in paragraph XIX (p. 6, lines 25-27), she was a shareholder of said defendant at the time of each and all of the transactions of which she complains, that is to say, including the matters

complained of in paragraphs XXII to XXIX, inclusive (p. 10, line 10 to p. 16, line 19), some of which are there alleged to have occurred at dates prior to October 11, 1928, the date upon which Transamerica Corporation was organized, as alleged in paragraph I (p. 2, line 21) and before March 7, 1929.

3. What was the extent of the ownership of stock of defendant Transamerica Corporation of defendants Amadeo P. Giannini and L. M. Giannini, and John M. Grant, deceased, as alleged in [56] paragraph XXI (p. 9, lines 18-20), and what were the periods of time during which such shares were held.

4. What was the extent and number of shares of stock of defendant Transamerica Corporation as to which defendants Amadeo P. Giannini and L. M. Giannini held proxies, as alleged in paragraph XXI (p. 9, lines 18-20), and what were the periods of time during which such proxies were held.

5. What were the "various means and devices" by which it is alleged in paragraph XXI (p. 9, lines 18-25) defendant Amadeo P. Giannini and others selected and named the officers and members of the Board of Directors of defendant Transamerica Corporation and controlled and dominated and determined its entire business policies and affairs.

6. Whether the members of the Board of Directors of defendant Transamerica, alleged in paragraph XXI (p. 9, line 18 to p. 10, line 8) to have been controlled and dominated and not to have exercised any independent judgment in the per-

formance of their duties, at all times constituted a majority of the members of said Board of Directors, and if not at all times, then at what times.

7. [As an alternative to the Motion to Strike (post), Item 1] Wherein and in what manner and by reason of what facts did each director of Bancitaly Corporation, other than defendant Amadeo P. Giannini, become and remain the dummy agent and alter ego of said defendant, as alleged in paragraph XXIII (p. 11, lines 7-8).

8. [As an alternative to the Motion to Strike (post), Item 2] Wherein and in what manner was the salary agreement beyond the scope of the corporate powers of Bancitaly Corporation and in excess of the authority of its officials and Board of Directors, as alleged in paragraph XXIV (p. 11, lines 23-26). [57]

9. [As an alternative to the Motion to Strike (post), Item 3] To what extent were the credit items referred to in paragraph XXV (p. 12, lines 3-18) in excess of five per cent of the actual and true net profits of Bancitaly Corporation, as also alleged in said paragraph (p. 12, lines 19-28).

10. [As an alternative to the Motion to Strike (post), Item 3] Of what did the false, fictitious, inflated and untrue book profits, alleged in paragraph XXV (p. 12, lines 28-29), consist; what was the extent thereof; and what is meant by the words "book profits".

11. Which of the entries alleged in paragraph XXVII (p. 13, lines 25-26) were made prior to

March 7, 1929, the date upon which plaintiff became a stockholder of defendant Transamerica Corporation, what was the period of time to which the entries related, and what was the date and amount of each of such entries.

12. What were the dates and amounts of the several items and entries made in the corporate records and books of defendant Transamerica Corporation, as alleged in paragraph XXVII (p. 14, lines 3-12), and of the net profits of what period of time did such entries purport to be five per cent.

13. To what extent were the credit items, referred to in paragraph XXVII (p. 14, lines 3-12), in excess of five per cent of the actual and true net profits of Transamerica Corporation, as also alleged in paragraph XXVII (p. 14, lines 18-21).

14. Of what did the false, fictitious, inflated and untrue book profits alleged in paragraph XXVII (p. 14, lines 22-23) consist; what was the extent thereof; and what is meant by the words "book profits".

15. Whether, as alleged in paragraph XXVIII (p. 15, lines 2-14), sums purportedly payable to defendant Amadeo P. Giannini under said salary agreement "were by him unearned, and for which he gave no consideration" (p. 15, lines 11-12), or whether, as alleged in paragraph XXI (p. 9, lines 18-25), during all of the [58] times covered by said salary agreement since the incorporation of Transamerica Corporation defendant Amadeo P. Giannini controlled and determined its entire business policies and affairs.

16. How and in what manner did the credits referred to in paragraph XXVIII (p. 15, lines 2-14) constitute unauthorized and illegal corporate liabilities of Transamerica Corporation as in said paragraph alleged.

17. What were the date or dates and the amount or amounts in which payments were made to defendant Amadeo P. Giannini during the years 1927 to 1931, inclusive, as alleged in paragraph XXIX (p. 15, lines 16-24); which of said payments were made before October 11, 1928, the date upon which defendant Transamerica Corporation was organized (p. 2, line 21), and which were made before March 7, 1929, the date upon which plaintiff became a shareholder of defendant Transamerica Corporation, as alleged in paragraph III (p. 2, line 18).

18. What were the false, misleading and untrue names and designations under which payments and disbursements to defendant Amadeo P. Giannini are alleged in paragraph XXX (p. 17, lines 4-10) to have been covered, disguised and concealed.

19. What were the dates in 1932, 1933, 1934, 1935, 1936, 1937, and 1938, upon which Transamerica paid brokerage fees to defendant Walston & Co., as alleged in paragraph XXXIII (p. 18, lines 24-32); what was the amount of each payment; and were such fees the regular and usual fees.

20. What was the date and amount of each sum of money paid by Transamerica Corporation to Walston & Co. for use as capital and for other purposes, as alleged in said paragraph XXXIII (p. 19, lines 1-2).

21. How and in what manner were defendants Amadeo P. Giannini or his testator Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its [59] shareholders, as alleged in paragraph XXXIII (p. 19, lines 14-21).

22. What was the private and confidential knowledge and information, acquired by defendants Amadeo P. Giannini and L. M. Giannini in their capacity as officers and directors of defendant Transamerica Corporation and used for speculative operations, as alleged in paragraph XXXVII (p. 22, lines 2-8).

23. What means and methods were used to accomplish the payments and advances from Transamerica Corporation to Bankitaly Mortgage Company, as alleged in paragraph XXXVIII (p. 22, line 10 to p. 23, line 2).

24. How and in what manner were Amadeo P. Giannini, L. M. Giannini and Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its shareholders, as alleged in paragraph XXXIX (p. 24, lines 17-20).

25. How and in what manner were Amadeo P. Giannini, L. M. Giannini and Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its

shareholders, as alleged in paragraph XLI (p. 26, lines 14-18).

26. Who is Associated American Distributors, Inc. mentioned in paragraph XLII (p. 26, line 28; p. 27, lines 2, 20-21 and 24) and paragraph XLIII (p. 28, lines 5-6), and what was its relationship, if any, to defendant Transamerica Corporation.

27. What were the dates and amounts of the losses of Associated American Distributors, Inc., alleged in paragraph XLII (p. 27, lines 2-3).

28. What were the dates and amounts of the payments by defendant Transamerica Corporation to Associated American Distributors, Inc., alleged in paragraph XLII (p. 27, lines 7-8). [60]

29. What were the false, fictitious and misleading entries and records by which the transfer and use of funds of Transamerica Corporation were disguised, covered and concealed, as alleged in paragraph XLIII (p. 28, lines 17-18).

The foregoing motion will be made upon the ground that the First Amended Complaint lacks definiteness in the particulars specified and is defective in that regard, and that the details desired by defendant are necessary to enable him properly to prepare his responsive pleadings and to prepare for trial.

MOTION TO STRIKE

IV. For an order striking the following matters from the First Amended Complaint:

1. The language appearing in paragraph XXIII of said complaint, at page 11, lines 5 to 11, inclusive, reading as follows:

“and the remaining members of the Board of Directors and other officials of said corporation were, and each of them was, at all such times a dummy agent and alter ego of said defendant Amadeo P. Giannini, and as such controlled and dominated by him for the purpose of enhancing his own personal and individual interests to the detriment of said corporation and its shareholders in the particulars herein-after mentioned.”

2. The language appearing in paragraph XXIV of said complaint, at page 11, line 23 to page 12, line 1, reading as follows:

“Plaintiff alleges that the execution and making of said salary agreement was beyond the scope of the corporate powers of said Bancitaly Corporation, and in excess of the authority of its officials and [61] Board of Directors, and was caused to be made by said Amadeo P. Giannini, and knowingly permitted by the remaining members of the Board of Directors and other officials of said Bancitaly Corporation, each and all of whom intended thereby to enhance the personal and individual interests of and unjustly enrich the said defendant Amadeo P. Giannini, to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned.”

3. The language appearing in paragraph XXV of said complaint, at page 12, line 19 to page 13, line 5, reading as follows:

“Plaintiff further alleges with respect to the said entries and records, aforesaid, that the total credit and each item thereof so entered and recorded upon the corporate records and books of account of said Bancitaly Corporation in favor of said defendant, Amadeo P. Giannini, was and is false and untrue, in that the same does not truly and correctly represent five per cent (5%) of the actual and true net profits of said corporation for said period or any part thereof, but on the other hand was and is in excess thereof, and by said defendant and said directors and officers knowingly computed upon false, fictitious, inflated and untrue book profits, the precise extent thereof being to plaintiff unknown, and all of which was so caused to be done by said defendant, Amadeo P. Giannini, and knowingly permitted by the remaining members of the Board of Directors and other officials of said Bancitaly Corporation, with the intent of each of them to thereby enhance the personal and individual interests of and unjustly enrich the [62] said defendant, Amadeo P. Giannini, to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned.”

Said motion will be made upon the ground that

the matters above specified are redundant, immaterial and impertinent.

COSGROVE & O'NEIL

T. B. COSGROVE

F. J. O'NEIL

JOHN N. CRAMER

By JOHN N. CRAMER

Attorneys for Defendant Amadeo P. Giannini, Individually
and in all of the Capacities in
Which he is Sued.

The address of said attorneys for Amadeo P. Giannini is:

1031 Rowan Building,
458 South Spring Street,
Los Angeles, California.

NOTICE OF MOTION

To Vincent A. Marco, Esq., Percy V. Clibborn, Esq., Homer N. Boardman, Esq., and Joseph A. Ruskay, Esq., Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motions on for hearing before this Court (Honorable Harry A. Hollzer, District Judge) at Court Room No. 2, Post Office and Federal Courts Building, City of Los Angeles, California, on the 21st day of May, 1942, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard. [63]

You Will Further Take Notice that all of said motions will be made upon the files and records herein, including the First Amended Complaint, said motions and this notice, and, in addition, the motion for order requiring plaintiff separately to state the several causes of action will also be made upon the affidavit of John N. Cramer herewith served upon you.

Please Take Further Notice that defendant Amadeo P. Giannini will rely upon points and authorities in support of said motions, a copy of which is herewith served upon you.

COSGROVE & O'NEIL

T. B. COSGROVE

F. J. O'NEIL

JOHN N. CRAMER

By JOHN N. CRAMER

Attorneys for Defendant

AMADEO P. GIANNINI

1031 Rowan Building,

458 South Spring Street,

Los Angeles, California.

By The Court:

The date of the hearing of the above Motions, to wit, May 21, 1942, at 10:00 o'clock, A. M. is approved.

April 29, 1942.

H. A. HOLLZER

District Judge [64]

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN N. CRAMER IN SUPPORT OF MOTION OF DEFENDANT AMADEO P. GIANNINI, INDIVIDUALLY AND IN THE SEVERAL CAPACITIES IN WHICH HE IS SUED HEREIN, FOR SEPARATE STATEMENT OF CAUSES OF ACTION

State of California,
County of Los Angeles—ss.

John N. Cramer, being first duly sworn, on oath deposes and says:

1. Affiant is an attorney at law duly admitted to practice before this court and the courts of the State of California, and is one of the attorneys of record for defendant Amadeo P. Giannini, individually and in each of the capacities in which he is sued in the First Amended Complaint herein.

2. On or about December 29, 1938, one Rose Breakstone, alleging herself to be a stockholder of defendant herein, Transamerica Corporation, commenced an action in the Superior Court of the State of California in and for the County of Los Angeles, entitled, "Rose Breakstone, suing on behalf of herself and all other stockholders of Transamerica Corporation, Plaintiff v. Amadeo P. Giannini, et al., Defendants", and numbered 435131 in the files of said Superior Court. Said action is now pending and undetermined in said Superior Court upon the demurrer of [65] defendant therein Amadeo P. Giannini to plaintiff's Fourth Amended Complaint and his motion to strike therefrom. Said

demurrer was orally argued in behalf of said defendant Amadeo P. Giannini and by counsel for plaintiff therein, and written Points and Authorities and a written brief were submitted in behalf of said defendant. The matter was taken under submission by the court and neither the demurrer nor the motion to strike has been decided.

3. In and by said Fourth Amended Complaint plaintiff seeks to recover in behalf of defendant Transamerica Corporation from defendant Amadeo P. Giannini and certain other defendants the sum of \$778,470.42, alleged to have been paid to defendant Giannini during the years 1932 to 1938, inclusive. Such recovery is sought upon the same transaction alleged and set forth in paragraphs XXII to XXX, both inclusive, in the First Amended Complaint herein.

4. Affiant has discussed this situation with his co-counsel herein, Messrs. T. B. Cosgrove and F. J. O'Neil, and has arrived at the conclusion that if defendant Amadeo P. Giannini is required to file an answer herein he should interpose a plea of another action pending, to wit, said action No. 435131, primarily as a plea in abatement to the claim of plaintiff, the gist of which is alleged in paragraphs XXII to XXX, both inclusive, of the First Amended Complaint herein.

JOHN N. CRAMER

Subscribed and sworn to before me this 30th day of April, 1942.

MARY IVES ANDERSON

[Seal]

Notary Public in and for the
County of Los Angeles,
State of California [66]

Receipt of a copy of the within is hereby admitted this 30th day of April 1942.

VINCENT A. MARCO,
PERCY V. CLIBBORN,
HOMER N. BOARDMAN,
JOSEPH A. RUSKAY

By PERCY V. CLIBBORN
Attorneys for Plaintiff.

[Endorsed]: Filed April 30, 1942. [67]

[Title of District Court and Cause.]

MOTIONS BY DEFENDANT
HERBERT E. WHITE

- (1) TO DISMISS THE ACTION;
- (2) FOR AN ORDER REQUIRING PLAINTIFF TO SEPARATELY STATE CAUSES OF ACTION IN SEPARATE COUNTS;
- (3) FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS, AND
- (4) TO STRIKE.

MOTION TO DISMISS

I (a) To dismiss the action because the First Amended Complaint fails to state a claim upon which relief can be granted.

(b) To dismiss the action as to this defendant because the First Amended Complaint fails to state a claim against this defendant upon which relief can be granted. [68]

MOTION FOR SEPARATE STATEMENT

II. For an order requiring plaintiff to state in separate counts the claims founded upon the following separate transactions:

First. The transaction, the gist of which appears in paragraphs XXII to XXX, inclusive, and in which it is alleged that defendant Amadeo P. Gianini, individually, received from defendant Transamerica Corporation and its predecessor, Bancitaly Corporation, the sum of approximately \$5,000,000.00

under a salary agreement between defendant Amadeo P. Giannini and Bancitaly Corporation and assumed by defendant Transamerica Corporation, that said salary agreement was ultra vires as to Bancitaly Corporation, that it was made and assumed by the respective Boards of Directors acting under the domination of defendant Amadeo P. Giannini, that the payments made were computed upon false and fictitious profits, and that no consideration was given by defendant Amadeo P. Giannini.

Second. The transaction, the gist of which appears in paragraphs XXXI to XXXIV, inclusive, and in which it is alleged that defendant Amadeo P. Giannini and another caused defendant Transamerica Corporation unnecessarily to pay to defendant Walston & Co., a co-partnership, the sum of approximately \$500,000.00 as brokerage fees and for use as capital, which money was paid and distributed by said co-partnership to the alleged partners thereof, including defendant Amadeo P. Giannini and said Virgil D. Giannini, deceased.

Third. The transaction, the gist of which appears in paragraphs XXXV to XLIII, inclusive, and in respect to which it is alleged that defendant Amadeo P. Giannini and said Virgil D. Giannini, deceased, and others received substantial sums as profits from speculations carried on through Bancitaly Mortgage Company, later Pacific Coast Mortgage Company, and a trust syndicate described as the "Mallory-Smith Trust Syndicate" in the aiding and [69] abetting of which Associated American

Distributors, Inc., incurred losses of approximately \$2,250,000.00, which losses defendant Amadeo P. Giannini and another caused defendant Trans-america Corporation to reimburse said Associated American Distributors, Inc.

This motion is made upon the ground that the First Amended Complaint unites and does not state in separate counts the several claims founded upon separate transactions or occurrences, in violation of the provisions of paragraph (b) of Rule 10 of the Federal Rules of Civil Procedure; that the defendants involved in said first transaction are not the same as the defendants involved in said second transaction or in said third transaction; that the defendants involved in said third transaction are not the same as the defendants involved in said second transaction; that plaintiff's alleged right to recover in behalf of Transamerica is based upon separate and different theories upon each of said three transactions; that a statement in separate counts of said three transactions will facilitate the clear presentation of the matters set forth, and that such a separate statement will facilitate the presentation of the special defenses thereto of defendant Herbert E. White.

MOTION FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS

III. For an order requiring plaintiff to make a more definite statement of, or a bill of particulars in respect to, the following matters, as to each of which defendant desires more definite particulars

and in respect to each of which the First Amended Complaint is defective. Items 7, 8, 9, 10, 32 and 33, hereinafter set forth, as noted therein, involve allegations which defendant seeks to have stricken in his Motion to Strike (post). In respect to Items 7, 8, 9, 10, 32 and 33, this motion is made in the alternative and without prejudice to the Motion to Strike.

1. What is the number of shares of capital stock of defendant Transamerica Corporation of which plaintiff is the holder, [70] as alleged in paragraph III (p. 3, lines 17-21), and what was the total number of issued and outstanding shares of capital stock of Transamerica Corporation on the date of the commencement of this action.

2. Whether plaintiff has been a shareholder of Transamerica only since on or about March 7, 1929, as alleged in paragraph III (p. 3, lines 17-21), or whether, as alleged in paragraph XIX (p. 6, lines 25-27), she was a shareholder of said defendant at the time of each and all of the transactions of which she complains, that is to say, including the matters complained of in paragraphs XXII to XXIX, inclusive (p. 10, line 10 to p. 16, line 19), some of which are there alleged to have occurred at dates prior to October 11, 1928, the date upon which Transamerica Corporation was organized, as alleged in paragraph I (p. 2, line 21) and before March 7, 1929.

3. What was the extent of the ownership of stock of defendant Transamerica Corporation of defendants Amadeo P. Giannini and L. M. Giannini, and John M. Grant, deceased, as alleged in para-

graph XXI (p. 9, lines 18-20), and what were the periods of time during which such shares were held.

4. What was the extent and number of shares of stock of defendant Transamerica Corporation as to which defendants Amadeo P. Giannini and L. M. Giannini held proxies, as alleged in paragraph XXI (p.9, lines 18-20), and what were the periods of time during which such proxies were held.

5. What were the "various means and devices" by which it is alleged in paragraph XXI (p.9, lines 18-25) defendant Amadeo P. Giannini and others selected and named the officers and members of the Board of Directors of defendant Transamerica Corporation and controlled and dominated and determined its entire business policies and affairs.

6. Whether the members of the Board of Directors of [71] defendant Transamerica, alleged in paragraph XXI (p.9, line 18 to p.10, line 8) to have been controlled and dominated and not to have exercised any independent judgment in the performance of their duties, at all times constituted a majority of the members of said Board of Directors; and if not at all times, then at what times.

7. (As an alternative to the Motion to Strike (post), Item 1) Wherein and in what manner and by reason of what facts did each director of Bancitaly Corporation, other than defendant Amadeo P. Giannini, become and remain the dummy agent and alter ego of said defendant, as alleged in paragraph XXIII (p.11, lines 7-8).

8. (As an alternative to the Motion to Strike (post), Item 2) Wherein and in what manner was

the salary agreement beyond the scope of the corporate powers of Bancitaly Corporation and in excess of the authority of its officials and Board of Directors, as alleged in paragraph XXIV (p.11, lines 23-26).

9. (As an alternative to the Motion to Strike (post), Item 3) To what extent were the credit items referred to in paragraph XXV (p.12, lines 3-18) in excess of five per cent of the actual and true net profits of Bancitaly Corporation, as also alleged in said paragraph (p.12, lines 19-28).

10. (As an alternative to the Motion to Strike (post), Item 3) Of what did the false, fictitious, inflated and untrue book profits, alleged in paragraph XXV (p.12, lines 28 and 29), consist, and what was the extent thereof.

11. Which of the entries alleged in paragraph XXVII (p.13, lines 25-26) were made prior to March 7, 1929, the date upon which plaintiff became a stockholder of defendant Transamerica Corporation, what was the period of time to which the entries related, and what was the date and amount of each of such entries.

12. What were the dates and amounts of the several items and entries made in the corporate records and books of [72] defendant Transamerica Corporation, as alleged in paragraph XXVII (p.14, lines 3-12), and of the net profits of what period of time did such entries purport to be five per cent.

13. To what extent were the credit items, referred to in paragraph XXVII (p.14, lines 3-12), in excess of five per cent of the actual and true net

profits of Transamerica Corporation, as also alleged in paragraph XXVII (p.14, lines 18-21).

14. Of what did the false, fictitious, inflated and untrue book profits alleged in paragraph XXVII (p. 14, lines 22-23) consist, and what was the extent thereof.

15. Whether, as alleged in paragraph XXVIII (p.15, lines 2-14), sums purportedly payable to defendant Amadeo P. Giannini under said salary agreement "were by him unearned, and for which he gave no consideration" (p. 16, lines 11-12), or whether, as alleged in paragraph XXI (p.9, lines 18-25), during all of the times covered by said salary agreement since the incorporation of Transamerica Corporation defendant Amadeo P. Giannini controlled and determined its entire business policies and affairs.

16. How and in what manner did the credits referred to in paragraph XXVIII (p.15, lines 2-14) constitute unauthorized and illegal corporate liabilities of Transamerica Corporation as in said paragraph alleged.

17. What were the date or dates and the amount or amounts in which payments were made to defendant Amadeo P. Giannini during the years 1927 to 1931, inclusive, as alleged in paragraph XXIX (p.15, lines 16-24); which of said payments were made before October 11, 1928, the date upon which defendant Transamerica Corporation was organized (p.2, line 21), and which were made before March 7, 1929, the date upon which plaintiff became a shareholder of defendant Transamerica Cor-

poration, as inferentially alleged in paragraph III (p.2, line 18). [73]

18. What were the false, misleading and untrue names and designations under which payments and disbursements to defendant Amadeo P. Giannini are alleged in paragraph XXX (p.17, lines 4-10) to have been covered, disguised and concealed.

19. What were the dates in 1932, 1933, 1934, 1935, 1936, 1937, and 1938, upon which Transamerica paid brokerage fees to defendant Walston & Co., as alleged in paragraph XXXIII (p.18, line 24-32), and what was the amount of each payment; and were such fees the regular and usual fees.

20. What was the date and amount of each sum of money paid by Transamerica Corporation to Walston & Co., for use as capital and for other purposes, as alleged in said paragraph XXXIII (p.19, lines 1-2).

21. How and in what manner were defendants Amadeo P. Giannini or his testator, Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its shareholders, as alleged in paragraph XXXIII (p.19, lines 14-21).

22. What was the private and confidential knowledge and information, acquired by defendants Amadeo P. Giannini and L. M. Giannini in their capacity as officers and directors of defendant Transamerica Corporation and used for speculative operations, as alleged in paragraph XXXVII (p.22, lines 2-8),

and of what part thereof did defendant White have knowledge or give consent.

23. What means and methods were used to accomplish the payments and advances from Transamerica Corporation to Bankitaly Mortgage Company, as alleged in paragraph XXXVIII (p.22, line 10 to p.23, line 2).

24. How and in what manner were Amadeo P. Giannini, L. M. Giannini and Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its shareholders, as alleged in paragraph XXXIX (p. 24, lines 17-20). [74]

25. How and in what manner were Amadeo P. Giannini, L. M. Giannini and Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its shareholders, as alleged in paragraph XLI (p.26, lines 14-18).

26. Who is Associated American Distributors, Inc., mentioned in paragraph XLII (p.26, line 28; p.27, lines 2, 21-21 and 24) and paragraph XLIII (p.28, lines 5-6), and what was its relationship, if any, to defendant Transamerica Corporation.

27. What were the dates and amounts of the losses of Associated American Distributors, Inc., alleged in paragraph XLII (p.27, lines 2-3).

28. What were the dates and amounts of the payments by defendant Transamerica Corporation

to Associated American Distributors, Inc., alleged in paragraph XLII (p.27, lines 7-8).

29. What were the false, fictitious and misleading entries and records by which the transfer and use of funds of Transamerica Corporation were disguised, covered and concealed, as alleged in paragraph XLIII (p.28, lines 17-18).

30. What loss, if any, did Transamerica Corporation suffer by paying brokerage fees to Walston & Co., as alleged in paragraph XXX (p.18, lines 24-32).

31. What brokerage business was diverted to Walston & Co., which belonged to Transamerica Corporation, as alleged in paragraph XXX (p.18, lines 24-32).

32. How or in what manner defendant White could have or did knowingly or otherwise permit Transamerica Corporation to pay to defendant Amadeo P. Giannini on account of or by reason of unlawful credits or otherwise substantial or any sums of money aggregating \$5,000,000.00, or any other sum, as set forth in paragraph XXIX (p.15, line 16, to p.16, line 19); nor how defendant White could have or did permit the payment of any sums by [75] Transamerica Corporation to Amadeo P. Giannini before defendant White became a director (p.19, line 32), as alleged in paragraph XX (p.8, line 14).

33. At what date or dates during the year 1932 were the sums of money referred to in paragraph XXXVIII (p.22 line 10 to p.23 line 26) made by defendant Transamerica Corporation and whether

said payments were made before March 31, 1922, when defendant White became a director of said Transamerica Corporation.

The foregoing motion will be made upon the ground that the First Amended Complaint lacks definiteness in the particulars specified and is defective in that regard, and that the details desired by defendant are necessary to enable this defendant properly to prepare his responsive pleadings and to prepare for trial.

MOTION TO STRIKE

IV. For an order striking the following matters from the First Amended Complaint:

1. The language appearing in paragraph XXIII of said complaint, at page 11, lines 5 to 11, inclusive, reading as follows:

“and the remaining members of the Board of Directors and other officials of said corporation were, and each of them was, at all such times a dummy agent and alter ego of said defendant Amadeo P. Giannini, and as such controlled and dominated by him for the purpose of enhancing his own personal and individual interests to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned.”

2. The language appearing in paragraph XXIV of said complaint, at page 11, line 23 to page 12, line 1, reading as follows: [76]

“Plaintiff alleges that the execution and mak-

ing of said salary agreement was beyond the scope of the corporate powers of said Bancitaly Corporation, and in excess of the authority of its officials and Board of Directors, and was caused to be made by said Amadeo P. Giannini, and knowingly permitted by the remaining members of the Board of Directors and other officials of said Bancitaly Corporation, each and all of whom intended thereby to enhance the personal and individual interests of and unjustly enrich the said defendant Amadeo P. Giannini, to the detriment of said corporation and its shareholders in the particulars herein-after mentioned."

3. The language appearing in paragraph XXV of said complaint, at page 12, line 19 to page 13, line 5, residing as follows:

"Plaintiff further alleges with respect to the said entries and records, aforesaid, that the total credit and each item thereof so entered and recorded upon the corporate records and books of account of said Bancitaly Corporation in favor of said defendant, Amadeo P. Giannini, was and is false and untrue, in that the same does not truly and correctly represent five per cent (5%) of the actual and true net profits of said corporation for said period or any part thereof, but on the other hand was and is in excess thereof, and by said defendant and said directors and officers knowingly computed upon false, fictitious, inflated and untrue

book profits, the precise extent thereof being to plaintiff unknown, and all of which was so caused to be done by said defendant, Amadeo P. Giannini, and knowingly permitted by the remaining [77] members of the Board of Directors and other officials of said Bancitaly Corporation, with the intent of each of them to thereby enhance the personal and individual interests of and unjustly enrich the said defendant, Amadeo P. Giannini, to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned."

4. All of paragraphs XXII, XXIII, XXIV, XXV, XXVI, XXVII and XXVIII (p.10, line 10 to p.15, line 14), each of the same having reference to the organization of Bancitaly Corporation and its transactions with Amadeo P. Giannini prior to the time this defendant became a director, as alleged on page 8, line 14.

Said motion will be made upon the ground that the matters above specified are redundant, immaterial and impertinent.

TANNER, ODELL & TAFT
By ROBERT A. ODELL
Attorneys for Defendant
HERBERT E. WHITE.

The address of said attorneys for Herbert E. White is:

1011 Van Nuys Building,
210 West Seventh St.,
Los Angeles, Cal.

NOTICE OF MOTION

To: Vincent A. Marco, Esq., Percy V. Clibborn, Esq., Homer N. Boardman, Esq., and Joseph A. Ruskay, Esq., Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motions on for hearing before this Court (Honorable Harry A. Hollzer, District Judge) at Court Room No. 2, Post Office and Federal Courts Building, City of Los Angeles, California, on the [78] 21st day of May, 1942, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

You Will Further Take Notice that all of said motions will be made upon the files and records herein, including the First Amended Complaint, said motions and this notice.

Please Take Further Notice that defendant Herbert E. White will rely upon points and authorities in support of said motions, a copy of which is herewith served upon you.

TANNER, ODELL & TAFT
ROBERT A. ODELL

Attorneys for Defendant
HERBERT E. WHITE.

1011 Van Nuys Bldg.,
210 W. 7th St.,
Los Angeles, Calif. [79]

Received copy of the within Motions etc. this
30th day of April, 1942.

VINCENT A. MARCO,
PERCY V. CLIBBORN,
HOMER N. BOARDMAN, and
JOSEPH A. RUSKAY,
By PERCY V. CLIBBORN,
Attorney for Plaintiff.

[Endorsed]: Filed April 30, 1942. [80]

[Title of District Court and Cause.]

NOTICE OF MOTIONS BY DEFENDANTS
WALSTON & CO., A COPARTNERSHIP
AND CHARLES de Y. ELKUS, WILLIAM
S. HOELSCHER, CLIFFORD P. HOFF-
MAN, C. J. SMITH, VERNON C. WALSTON
AND CLAIRE GIANNINI HOFFMAN
TRANSACTING BUSINESS AS COPART-
NERS UNDER THE FIRM NAME AND
STYLE OF WALSTON & CO.

To Vincent A. Marco, Esq., Percy V. Clibborn,
Esq., Homer N. Boardman, Esq., and Joseph
A. Ruskay, Esq., attorneys for plaintiff:

Please Take Notice that upon the complaint and
other papers and records in this cause, including
this notice of motions and points and authorities
in support thereof, defendants Walston & Co., a
copartnership, and Charles de Y. Elkus, William
S. Hoelscher, Clifford P. Hoffman, C. J. Smith,

Vernon C. Walston and Claire Giannini Hoffman, transacting business as copartners [81] under the firm name and style of Walston & Co. will move the above Court (Honorable Harry A. Hollzer, District Judge) at Courtroom No. 2, Post Office and Federal Courts Building, City of Los Angeles, California, on the 21st day of May, 1942, at ten o'clock A. M. of that day, or as soon thereafter as counsel can be heard, as follows:

I.

For an order requiring plaintiff to state in a separate count the alleged claim founded upon the separate transaction referred to in Paragraphs XXXI to XXXIV, inclusive, of the first amended complaint herein, in which paragraphs it is alleged in substance that defendants Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman, together with Virgil D. Gianinni caused to be organized and created the copartnership of Walston & Co., and that thereafter defendants Amadeo P. Giannini and L. M. Giannini caused defendant Transamerica Corporation to divert its security brokerage business to said copartnership and unnecessarily to pay to said copartnership the sum of approximately Five Hundred Thousand Dollars (\$500,000.00) as brokerage fees and for use as capital, which money from time to time was divided and disbursed by said copartnership to said defendants Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman and to said Virgil D. Giannini.

This motion is made upon the ground that the first amended complaint herein unites and does not

state in separate counts several claims founded upon separate transactions or occurrences, of which the separate transaction above referred to is one, and the only one in which the moving defendants are in anywise interested or concerned, in violation of the provisions of Rule 10 (b) of the Federal Rules of Civil Procedure; that the defendants involved in the separate transaction above referred to [82] are not the same as the defendants involved in the other separate transactions or occurrences referred to in said first amended complaint; that the plaintiff's alleged right to recover from these moving defendants is based upon theories separate and different from those upon which plaintiff claims the right to recover from the other defendants herein; that a statement in a separate count of the separate transaction above referred to will facilitate the clear presentation of the matters pertinent thereto, as well as the presentation of the general and special defenses of these moving defendants.

II.

To dismiss the above action on the following grounds, to-wit:

(a) That said first amended complaint fails to state a claim upon which relief can be granted;

(b) That the alleged claim against these moving defendants is barred by the provisions of Section 338, Subdivision (4) and Section 339 of the Code of Civil Procedure of the State of California;

(c) That these moving defendants are improperly joined as defendants.

III.

In the alternative and without prejudice to the foregoing motion to dismiss, for an order severing the alleged cause of action referred to in Paragraph I hereinabove and ordering that said cause of action be separately tried.

IV.

For an order requiring plaintiff to make a more definite statement of or a bill of particulars in respect to, the following matters, as to each of which these moving defendants desire more definite particulars and in respect to each of which the first amended complaint is defective.

1. What is the number of shares of capital stock of [83] defendant Transamerica Corporation of which plaintiff is the holder, as alleged in Paragraph III, (p. 3, lines 17-21), and what was the total number of issued and outstanding shares of capital stock of Transamerica Corporation on the date of the commencement of this action.

2. What was the extent of the ownership of stock of defendant Transamerica Corporation of defendants Amadeo P. Giannini and L. M. Giannini, and John M. Grant, deceased, as alleged in paragraph XXI (p. 9, lines 18-20), and what were the periods of time during which such shares were held.

3. What was the extent and number of shares of stock of defendant Transamerica Corporation as to which defendants Amadeo P. Giannini and L. M. Giannini held proxies, as alleged in paragraph XXI (p. 9, lines 18-20), and what were the periods of

time during which such proxies were held.

4. What were the "various means and devices" by which it is alleged in Paragraph XXI (p. 9, lines 18-25) defendant Amadeo P. Giannini and other selected and named the officers and members of the Board of Directors of defendant Transamerica Corporation and controlled and dominated and determined its entire business policies and affairs.

5. Whether the members of the Board of Directors of defendant Transamerica, alleged in Paragraph XXI, (p. 9, line 18 to p. 10, line 8) to have been controlled and dominated and not to have exercised any independent judgment in the performance of their duties, at all times constituted a majority of the members of said Board of Directors, and if not at all times, then at what times.

6. Wherein and in what manner and by reason of what facts did each director of Bancitaly Corporation, other than defendant Amadeo P. Giannini, become and remain the dummy agent and alter ego of said defendant, as alleged in Paragraph XXIII (p. 11, lines 7-8). [84]

7. What were the dates in 1932, 1933, 1934, 1935, 1936, 1937, and 1938, upon which Transamerica paid brokerage fees to defendant Walston & Co., as alleged in Paragraph XXXIII (p. 18, lines 24-32), and what was the amount of each payment.

8. What was the date and amount of each sum of money paid by Transamerica Corporation to Walston & Co. for use as capital and for other

purposes, as alleged in said Paragraph XXXIII (p. 19, lines 1-2).

9. How and in what manner were defendants Amadeo P. Giannini or his testator Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its share holders, as alleged in Paragraph XXXIII (p. 19, lines 14-21).

10. In what manner and to what extent and by reason of what facts did said other individual members of Walston & Co. become the secret trustees, agents and representatives of defendants Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman and Virgil D. Giannini as alleged in Paragraph XXXI (p. 17, lines 21-30).

11. Were the brokerage fees allegedly paid to Walston & Co. as alleged in Paragraph XXXIII (p. 18, lines 24-32) the same as or more or less than the fees usually and regularly payable to brokers in transactions of the nature involved.

V.

For an order striking the following matters from the first amended complaint:

1. The language appearing in Paragraph XXXI thereof at page 18, lines 4 and 5, reading as follows: "and as such constituted and was the alter ego of each of said defendants."

2. The language appearing in Paragraph XXXIII thereof at page 19, lines 8 and 9 thereof as follows: "as the alter ego and dummy agent of and"

3. Each and every allegation contained in Paragraphs IV, XI, XIII, XIV, XX to XXX, both inclusive, and XXXV to XLI, both inclusive.

Said motion to strike will be made upon the ground that the matters above specified are redundant, immaterial and impertinent.

Insofar as the foregoing motion for a more definite statement or bill of particulars pertains to allegations specified in the foregoing motion to strike, the former motion shall be deemed as an alternative to the latter.

BACIGALUPI, ELKUS & SALLINGER

CLAUDE N. ROSENBERG, Esq.

By CLAUDE N. ROSENBERG

Attorneys for Defendants
Walston & Co., a copartnership, and Charles de Y. Elkus, William S. Hoelscher, Clifford P. Hoffman, C. J. Smith, Vernon C. Walston and Claire Giannini Hoffman, transacting business as copartners under the firm name and style of Walston & Co.

The address of said attorneys is:

300 Montgomery Street

San Francisco, California [86]

Receipt of a copy of the within is hereby admitted this 4th day of May, 1942.

VINCENT A. MARCO,
PERCY V. CLIBBORN,
HOMER N. BOARDMAN,
JOSEPH A. RUSKAY,
By PERCY V. CLIBBORN,
Attorneys for Plaintiff

[Endorsed]: Filed May 4, 1942. [87]

[Title of District Court and Cause.]

MOTIONS BY DEFENDANTS L. M. GIANNINI, INDIVIDUALLY, AND AS AN ALLEGED PARTNER OF WALSTON & CO., O. D. HAMLIN, T. W. HARRIS, A. P. JACOBS, F. G. STEVENOT, P. A. BRICCA, GEORGE J. De MARTINI, W. N. LAGOMARSINO, CHESTER H. LOVELAND, THEODORE M. STUART, A. J. SCAMPINI, GORDON GRAY and RUSS AVERY,

- (1) TO DISMISS THE ACTION;
- (2) FOR AN ORDER REQUIRING PLAINTIFF SEPARATELY TO STATE CAUSES OF ACTION IN SEPARATE COUNTS;
- (3) FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS; AND
- (4) TO STRIKE.

Defendants L. M. Giannini, Individually, and as an Alleged Partner of Walston & Co., O. D. Ham-

lin, T. W. Harris, A. P. Jacobs, F. G. Stevenot, P. A. Bricca, George J. De Martini, W. N. Lagomarsino, Chester H. Loveland, Theodore M. Stuart, A. J. Scampini, Gordon Gray and Russ Avery do, and each of them does move the Court as follows: [88]

I.

MOTION TO DISMISS

To dismiss the action because the First Amended Complaint fails to state a claim against said defendants, or any of them.

II.

MOTION FOR SEPARATE STATEMENT

For an order requiring plaintiff to state in separate counts the claims founded upon the following separate transactions:

First. The transaction, the gist of which appears in paragraphs XXII to XXX, inclusive, and in which it is alleged that defendant Amadeo P. Giannini, individually, received from defendant Transamerica Corporation and its predecessor, Bancitaly Corporation, the sum of approximately \$5,000,000.00 under a salary agreement between defendant Amadeo P. Giannini and Bancitaly Corporation and assumed by defendant Transamerica Corporation, that said salary agreement was ultra vires as to Bancitaly Corporation, that it was made and assumed by the respective Boards of Directors acting under the domination of defendant Amadeo P. Gian-

nini, that the payments made were computed upon false and fictitious profits, and that no consideration was given by defendant Amadeo P. Giannini.

Second. The transaction, the gist of which appears in paragraphs XXXI to XXXIV, inclusive, and in which it is alleged that defendant Amadeo P. Giannini and another caused defendant Transamerica Corporation unnecessarily to pay to defendant Walston & Co., a co-partnership, the sum of approximately \$500,000.00 as brokerage fees and for use as capital, which money was paid and distributed by said co-partnership to the alleged partners thereof, including defendant, Amadeo P. Giannini and said Virgil D. Giannini, deceased.

Third. The transaction, the gist of which appears in paragraphs XXXV to XLIII, inclusive, and in respect to which it is [89] alleged that defendants Amadeo P. Giannini, L. M. Giannini and said Virgil D. Giannini, deceased, and others received substantial sums as profits from speculations carried on through Bankitaly Mortgage Company, later Pacific Coast Mortgage Company, and a trust syndicate described as the "Mallory-Smith Trust Syndicate" in the aiding and abetting of which Associated American Distributors, Inc. incurred losses of approximately \$2,250,000.00, which losses defendant Amadeo P. Giannini and another caused defendant Transamerica Corporation to reimburse said Associated American Distributors, Inc.

This motion is made upon the ground that the First Amended Complaint unites and does not state in separate counts the several claims founded upon separate transactions or occurrences, in violation

of the provisions of paragraph (b) of Rule 10 of the Federal Rules of Civil Procedure; that the defendants involved in said first transaction are not the same as the defendants involved in said second transaction or in said third transaction; that the defendants involved in said third transaction are not the same as the defendants involved in said second transaction; that plaintiff's alleged right to recover in behalf of Transamerica is based upon separate and different theories upon each of said three transactions; that a statement in separate counts of said three transactions will facilitate the clear presentation of the matters set forth, and that such a separate statement will facilitate the presentation of the special defenses thereto of defendants L. M. Giannini, O. D. Hamlin, T. W. Harris, A. P. Jacobs, F. G. Stevenot, P. A. Bricca, George J. De Martini, W. N. Lagomarsino, Chester H. Loveland, Theodore M. Stuart, A. J. Scampini, Gordon Gray and Russ Avery

III.

MOTION FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS

For an order requiring plaintiff to make a more definite [90] statement of, or a bill of particulars in respect to, the following matters, as to each of which these defendants desire more definite particulars and in respect to each of which the first amended complaint is defective. Items 7, 8, 9 and 10 hereinafter set forth, as noted therein, involve

allegations which defendants seek to have stricken in their Motion to Strike (post). In respect to Items 7, 8, 9 and 10, this motion is made in the alternative and without prejudice to the Motion to Strike.

1. What is the number of shares of capital stock of defendant Transamerica Corporation of which plaintiff is the holder, as alleged in paragraph III (p. 3, lines 17-21), and what was the total number of issued and outstanding shares of capital stock of Transamerica Corporation on the date of the commencement of this action.

2. Whether plaintiff has been a shareholder of Transamerica only since on or about March 7, 1929, as alleged in paragraph III (p. 3, lines 17-21), or whether, as alleged in paragraph XIX (p. 6, lines 25-27), she was a shareholder of said defendant at the time of each and all of the transactions of which she complains, that is to say, including the matters complained of in paragraphs XXII to XXIX, inclusive (p. 10, line 10 to p. 16, line 19), some of which are there alleged to have occurred at dates prior to October 11, 1928, the date upon which Transamerica Corporation was organized, as alleged in paragraph I (p. 2, line 21) and before March 7, 1929.

3. What was the extent of the ownership of stock of defendant Transamerica Corporation of defendants Amadeo P. Giannini and L. M. Giannini, and John M. Grant, deceased, as alleged in paragraph XXI (p. 9, lines 18-20), and what were the periods of time during which such shares were held. [91]

4. What was the extent and number of shares of stock of defendant Transamerica Corporation as to which defendants Amadeo P. Giannini and L. M. Giannini held proxies, as alleged in paragraph XXI (p. 9, lines 18-20), and what were the periods of time during which such proxies were held.

5. What were the "various means and devices" by which it is alleged in paragraph XXI (p. 9, lines 18-25) defendant Amadeo P. Giannini and others selected and named the officers and members of the Board of Directors of defendant Transamerica Corporation and controlled and dominated and determined its entire business policies and affairs.

6. Whether the members of the Board of Directors of defendant Transamerica, alleged in paragraph XXI (p. 9, line 18 to p. 10, line 8) to have been controlled and dominated and not to have exercised any independent judgment in the performance of their duties, at all times constituted a majority of the members of said Board of Directors, and if not at all times, then at what times.

7. (As an alternative to the Motion to Strike (post, Item 1) Wherein and in what manner and by reason of what facts did each director of Bancitaly Corporation, other than defendant Amadeo P. Giannini, become and remain the dummy agent and alter ego of said defendant, as alleged in paragraph XXIII (p. 11, lines 7-8).

8. (As an alternative to the Motion to Strike (post, Item 2) Wherein and in what manner was the salary agreement beyond the scope of the corporate powers of Bancitaly Corporation and in

excess of the authority of its officials and Board of Directors, as alleged in paragraph XXIV (p. 11, lines 23-26).

9. (As an alternative to the Motion to Strike (post, Item 3) To what extent were the credit items referred to in paragraph XXV (p. 12, lines 3-18) in excess of five per cent of the [92] actual and true net profits of Bancitaly Corporation, as also alleged in said paragraph (p. 12, lines 19-28).

10. (As an alternative to the Motion to Strike (post, Item 3) Of what did the false, fictitious, inflated and untrue book profits, alleged in paragraph XXV (p. 12, lines 28 and 29), consist, and what was the extent thereof, and what is meant by the words "book profits."

11. Which of the entries alleged in paragraph XXVII (p. 13, lines 25-26) were made prior to March 7, 1929, the date upon which plaintiff became a stockholder of defendant Transamerica Corporation, what was the period of time to which the entries related, and what was the date and amount of each of such entries.

12. What were the dates and amounts of the several items and entries made in the corporate records and books of defendant Transamerica Corporation, as alleged in paragraph XXVII (p. 14, lines 3-12), and of the net profits of what period of time did such entries purport to be five per cent.

13. To what extent were the credit items, referred to in paragraph XXVII (p. 14, lines 3-12), in excess of five per cent of the actual and true net

profits of Transamerica Corporation, as also alleged in paragraph XXVII (p. 14, lines 18-21).

14. Of what did the false, fictitious, inflated and untrue book profits alleged in paragraph XXVII (p. 14, lines 22-23) consist, and what was the extent thereof, and what is meant by the words "book profits", and were such fees the regular and usual fees.

15. Whether, as alleged in paragraph XXVIII (p. 15, lines 2-14), sums purportedly payable to defendant Amadeo P. Giannini under said salary agreement "were by him unearned, and for which he gave no consideration" (p. 15, lines 11-12), or whether, as alleged in paragraph XXI (p. 9, lines 18-25), during all of the times covered by said salary agreement since the incorporation of Transamerica Corporation defendant Amadeo P. Giannini controlled and determined its entire business policies and affairs. [93]

16. How and in what manner did the credits referred to in paragraph XXVIII (p. 15, lines 2-14) constitute unauthorized and illegal corporate liabilities of Transamerica Corporation as in said paragraph alleged.

17. What were the date or dates and the amount or amounts in which payments were made to defendant Amadeo P. Giannini during the years 1927 to 1931, inclusive, as alleged in paragraph XXIX (p. 15, lines 16-24); which of said payments were made before October 11, 1928, the date upon which defendant Transamerica Corporation was organized (p. 2, line 21), and which were made before march

7, 1929, the date upon which plaintiff became a shareholder of defendant Transamerica Corporation, as alleged in paragraph III (p. 2, line 18).

18. What were the false, misleading and untrue names and designations under which payments and disbursements to defendant Amadeo P. Giannini are alleged in paragraph XXX (p. 17, lines 4-10) to have been covered, disguised and concealed.

19. What were the dates in 1932, 1933, 1934, 1935, 1936, 1937, and 1938, upon which Transamerica paid brokerage fees to defendant Walston & Co., as alleged in paragraph XXXIII (p. 18, lines 24-32), and what was the amount of each payment.

20. What was the date and amount of each sum of money paid by Transamerica Corporation to Walston & Co. for use as capital and for other purposes, as alleged in said paragraph XXXIII (p. 19, lines 1-2).

21. How and in what manner were defendants Amadeo P. Giannini or his testator Virgil D. Giannini, now deceased, or L. M. Giannini, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its shareholders, as alleged in paragraph XXXIII (p. 19, lines 14-21).

22. What was the private and confidential knowledge and information, acquired by defendants Amadeo P. Giannini and [94] L. M. Giannini in their capacity as officers and directors of defendant Transamerica Corporation and used for speculative operations, as alleged in paragraph XXXVII (p. 22, lines 2-8).

23. What means and methods were used to accomplish the payments and advances from Transamerica Corporation to Bankitaly Mortgage Company, as alleged in paragraph XXXVIII (p. 22, line 10 to p. 23, line 2).

24. How and in what manner were Amadeo P. Giannini, L. M. Giannini and Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its shareholders, as alleged in paragraph XXXIX (p. 24, lines 17-20).

25. How and in what manner were Amadeo P. Giannini, L. M. Giannini and Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its shareholders, as alleged in paragraph XLI (p. 26, lines 14-18).

26. Who is Associated American Distributors, Inc. mentioned in paragraph XLII (p. 26, line 28; p. 27, lines 2, 20-21 and 24) and paragraph XLIII (p. 28, lines 5-6), and what was its relationship, if any, to defendant Transamerica Corporation.

27. What were the dates and amounts of the losses of Associated Distributors, Inc., alleged in paragraph XLII (p. 27, lines 2-3).

28. What were the dates and amounts of the payments by defendant Transamerica Corporation to Associated American Distributors, Inc., alleged in paragraph XLII (p. 27, lines 7-8).

29. What were the false, fictitious and misleading

entries and records by which the transfer and use of funds of Transamerica Corporation were disguised, covered and concealed, as alleged in paragraph XLIII (p. 28, lines 17-18). [95]

30. What loss, if any, did Transamerica suffer by paying brokerage fees to Walston & Co., as alleged in paragraph XXXIII (p. 18, lines 24-32).

31. What brokerage business was diverted to Walston & Co., which belonged to Transamerica, as alleged in paragraph XXXIII (p. 18, lines 24-32).

32. In behalf of defendants Scampini and Avery, whose terms of office are alleged to have expired in 1938 (Paragraph XX, Page 7, lines 16½ and 21), what part of the \$34,000.00 payment, if any, alleged in Paragraph XXIX to have been made to Amadeo P. Giannini, was made before their terms of office expired, (Paragraph XXIX, page 16, line 7).

The foregoing motion will be made upon the ground that the First Amended Complaint lacks definiteness in the particulars specified and is defective in that regard, and that the details desired by these defendants are necessary to enable them properly to prepare their responsive pleadings and to prepare for trial.

IV.

MOTION TO STRIKE

For an order striking the following matters from the First Amended Complaint:

1. The language appearing in paragraph XXIII of said complaint, at page 11, lines 5 to 11, inclusive, reading as follows:

“and the remaining members of the Board of Directors and other officials of said corporation were, and each of them was, at all such times a dummy agent and alter ego of said defendant Amadeo P. Giannini, and as such controlled and dominated by him for the purpose of enhancing his own personal and individual interests to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned.” [96]

2. The language appearing in paragraph XXIV of said complaint, at page 11, line 23 to page 12, line 1, reading as follows:

“Plaintiff alleges that the execution and making of said salary agreement was beyond the scope of the corporate powers of said Bancitaly Corporation, and in excess of the authority of its officials and Board of Directors, and was caused to be made by said Amadeo P. Giannini, and knowingly permitted by the remaining members of the Board of Directors and other officials of said Bancitaly Corporation, each and all of whom intended thereby to enhance the personal and individual interests of and unjustly enrich the said defendant Amadeo P. Giannini, to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned.”

3. The language appearing in paragraph XXV of said complaint, at page 12, line 19 to page 13, line 5, reading as follows:

“Plaintiff further alleges with respect to the said entries and records, aforesaid, that the total credit and each item thereof so entered and recorded upon the corporate records and books of account of said Bancitaly Corporation in favor of said defendant, Amadeo P. Giannini, was and is false and untrue, in that the same does not truly and correctly represent five per cent (5%) of the actual and true net profits of said corporation for said period or any part thereof, but on the other hand was and is in excess thereof, and by said defendant and said directors and officers knowingly computed upon false, fictitious, inflated and untrue book profits, the precise extent thereof being to plaintiff unknown, and all of which [97] was so caused to be done by said defendant, Amadeo P. Giannini, and knowingly permitted by the remaining members of the Board of Directors and other officials of said Bancitaly Corporation, with the intent of each of them to thereby enhance the personal and individual interests of and unjustly enrich the said defendant, Amadeo P. Giannini, to the detriment of said corporation and its shareholders in the particulars hereinafter mentioned.”

4. All the allegations set forth in paragraphs XXII, XXIII, XXIV, XXV, XXVI, XXVII and XXVIII, and each of them, which refer

to the organization and operation of Bancitaly Corporation and its entering into transactions with Amadeo P. Giannini prior to the time that these defendants are alleged in paragraph XX to have become directors in Transamerica. (Page 6 lines 29-32; page 7 lines 8, 9, 12 to 21, inclusive.)

Said motion will be made upon the ground that the matters above specified are redundant, immaterial and impertinent.

RUSS AVERY and
GORDON GRAY

By RUSS AVERY

Attorneys for said defendants
L. M. Giannini, individually,
and as an alleged partner of
Walston & Co., O. D. Ham-
lin, T. W. Harris, A. P.
Jacobs, F. G. Stevenot, P.
A. Bricca, George J. De
Martini, W. N. Lagomarsino,
Chester H. Loveland,
Theodore M. Stuart, A. J.
Scampini, Gordon Gray and
Russ Avery.

RUSS AVERY

In Pro Per

604 Homer Laughlin Building
315 South Broadway
Los Angeles, California

GORDON GRAY

In Pro Per

Bank of America Building,
San Diego, California.

By RUSS AVERY [98]

NOTICE OF MOTION

To Vincent A. Marco, Esq., Percy V. Clibborn, Esq.,
Homer N. Boardman, Esq., and Joseph A. Rus-
kay, Esq., Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motions on for hearing before this Court (Honorable Harry A. Hollzer, District Judge) at Court Room No. 2, Post Office and Federal Courts Building, City of Los Angeles, California, on the 21st day of May, 1942, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

You Will Further Take Notice that all of said motions will be made upon the files and records herein, including the First Amended Complaint, said motions and this notice

Please Take Further Notice that these defendants will rely upon points and authorities in support of

said motions, a copy of which is herewith served upon you.

RUSS AVERY and
GORDON GRAY

By RUSS AVERY

Attorneys for said defendants
L. M. Giannini, individually,
and as an alleged partner of
Walston & Co., O. D. Ham-
lin, T. W. Harris, A. P.
Jacobs, F. G. Stevenot, P.
A. Bricca, George J. De
Martini, W. N. Lagomar-
sino, Chester H. Loveland,
Theodore M. Stuart, A. J.
Scampini, Gordon Gray and
Russ Avery.

RUSS AVERY

In Pro Per

604 Homer Laughlin Build-
ing,

315 South Broadway

Los Angeles, California.

GORDON GRAY

In Pro Per

Bank of America Building

San Diego, California.

By RUSS AVERY [99]

Received copy of the within motions this 4th day of May, 1942.

VINCENT ANTHONY MARCO,
PERCY V. CLIBBORN,
HOMER N. BOARDMAN and
JOSEPH A. RUSKAY

By PERCY V. CLIBBORN

Attorneys for Plaintiff.

[Endorsed]: Filed May 4, 1942 [100]

[Title of District Court and Cause.]

MOTIONS BY DEFENDANTS A. H. GIANNINI,
WILLIAM E. BLAUER, LEON BOC-
QUERAZ, E. H. CLARK, CHARLES N.
HAWKINS, W. F. MORRISH (SUED
HEREIN AS W. F. MORRISON), A. J.
MOUNT, ALFRED E. SBARBORO (SUED
AS ALFRED E. SPARBORO), JAMES A.
BACIGALUPI, GEORGE A. WEBSTER, C.
R. BELL, W. W. GARTHWAITE AND
LOUIS FERRARI, JOINTLY AND SEV-
ERALLY:

- (1) TO DISMISS THE ACTION;
- (2) FOR AN ORDER REQUIRING PLAIN-
TIF TO STATE SEPARATELY CAUSES
OF ACTION IN SEPARATE COUNTS;
- (3) FOR A MORE DEFINITE STATEMENT
OR BILL OF PARTICULARS; AND

(4) TO STRIKE OUT PORTIONS OF THE COMPLAINT.

Defendants A. H. Giannini, William E. Blauer, Leon Bocqueraz, E. H. Clark, Charles N. Hawkins, W. F. Morrish (sued [101] herein as W. F. Morrison), A. J. Mount, Alfred E. Sbarboro (sued herein as Alfred E. Sparboro), James A. Bacigalupi, George A. Webster, C. R. Bell, W. W. Garthwaite and Louis Ferrari, jointly, and each severally, move the Court as follows:

MOTION TO DISMISS

I. To dismiss the above entitled action,

(a) because the First Amended Complaint fails to state a claim against said defendants jointly, or against any one or more of them jointly with others, or against any of said defendants severally, upon which relief can be granted;

(b) because the alleged claim against these defendants jointly, and severally as to each, is barred by the provisions of Section 338, subdivision 4, Section 339, subdivision 1, and Section 343, of the Code of Civil Procedure of the State of California.

MOTION FOR SEPARATE STATEMENT

II. For an order requiring the plaintiff to state in separate counts the claims founded upon the following separate transactions:

First: The transaction the gist of which appears in paragraphs XXII to XXV, inclusive, and in which it is alleged that on the 13th day of April,

1927, the said Bancitaly Corporation, acting through its Board of Directors, entered into a written agreement with Amadeo P. Giannini providing that, for his personal services rendered as President of said corporation, he should receive and be paid five per cent of the net profits of the said corporation per annum, with a guaranteed minimum of \$100,000.00 per annum, commencing on January 1, 1927, in lieu of salary; that said agreement was beyond the scope of the corporate powers of Bancitaly Corporation, and in excess of the authority of its Board of Directors, and was made to unjustly enrich the defendant Amadeo [102] P. Giannini, to the detriment of the stockholders of Bancitaly Corporation; that pursuant to said agreement, defendant Amadeo P. Giannini caused, and the directors and officials of Bancitaly Corporation permitted, certain entries and records to be made in the books of Bancitaly Corporation which reflected a credit in favor of said Amadeo P. Giannini in the sum of \$925,000.00, and that the books of account of said Bancitaly Corporation were likewise untrue, in that the amounts credited to Amadeo P. Giannini did not correctly represent five per cent of the actual net profits of the corporation for the period in question, but that the amount was in excess thereof, and was improperly computed upon untrue book profits, to the detriment of said Bancitaly Corporation.

Second: The transaction the gist of which appears in paragraphs XVII to XXX, inclusive, and in which it is alleged that Amadeo P. Giannini caused his co-defendant directors and officers of

Transamerica Corporation, on the 27th day of December, 1928, to acquire the assets of Bancitaly Corporation, and to assume the salary agreement and the credit entries with regard thereto, and that from the first day of January, 1927 to about the first day of January, 1930, Amadeo P. Giannini and the officers and directors of Transamerica Corporation permitted entries in the books of the corporation in favor of Amadeo P. Giannini in substantial sums not less than \$5,000,000.00; that the said entries were not true or correct, as the said sum does not truly and correctly represent five per cent of the actual and true net profits of Transamerica Corporation for said period, or any part thereof; that said entries were made and credits given to enrich the defendant Amadeo P. Giannini, and to the detriment of Transamerica Corporation, and that no consideration was given by defendant A. P. Giannini for the said credits; that said Transamerica Corporation, between the first day of January, 1927 [103] and the first day of January, 1939, paid to Amadeo P. Giannini sums of money on account of said wrongful credits, aggregating not less than \$5,000,000.00; that the assets and liabilities of Transamerica Corporation were reflected on the books by an intricate system of accounting, and that by reason thereof the said expenditures were disguised and concealed.

Third: The transaction the gist of which appears in paragraphs XXXI to XXXIV, inclusive, and in which it is alleged that on or about the 17th day of December, 1932, Amadeo P. Giannini and others

caused the organization of the firm of Walston & Co., and that during the years from 1932 to 1938, inclusive, the officers and directors of Transamerica Corporation caused Transamerica Corporation to unnecessarily pay to Walston & Co. large and substantial sums of money as brokerage fees and other sums for use as capital, totaling approximately \$500,000.00, to the detriment of said Transamerica Corporation and the unjust enrichment of Walston & Co. and its partners.

Fourth: The transaction the gist of which appears in paragraphs XXXV to XLIII, inclusive, in respect to which it is alleged that during the years 1932 to 1936, inclusive, Amadeo P. Giannini and others received substantial sums in profits from speculations in Transamerica stock, carried on through Bankitaly Mortgage Company, later Pacific Coast Mortgage Company, and the Mallory-Smith trust syndicate; that Associated American Distributors aided and abetted the said transactions, and incurred losses in so doing in approximately the sum of \$2,250,000.00, which Amadeo P. Giannini and the officers and directors of Transamerica during said period, caused defendant Transamerica to reimburse to said Associated American Distributors.

This motion is made upon the ground that the First Amended Complaint unites and does not state in separate counts the [104] several claims founded upon separate alleged transactions or occurrences, in violation of the provisions of paragraph (b) of Rule 10 of the Federal Rules of Civil Procedure; that the defendants involved in said first alleged

transaction are not the same as the defendants involved in the second alleged transaction, or in the third and fourth alleged transactions; that the defendants involved in the second alleged transaction are not the same as those involved in the first, third and fourth alleged transactions; and the defendants involved in the third alleged transaction are different from the defendants involved in the first, second and fourth alleged transactions; and that the defendants involved in the fourth alleged transaction are different from those involved in the first, second and third alleged transactions; that the plaintiff's alleged right to recover in behalf of Transamerica is based upon separate and different theories respecting each of said four alleged transactions; that the aforesaid four transactions are alleged to have occurred during different times, and that the officers and directors of Transamerica, during the respective transactions, were different; that a statement in separate counts of said four transactions will facilitate the clear presentation of the special defenses thereto of the defendants herein named, both severally and jointly, and particularly the defense of the defendants joining in this motion that they were neither directors nor officers during the times of the occurrence of any of said alleged transactions.

MOTION FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS

III. For an order requiring plaintiff to make a more definite statement of, or a bill of particulars

in respect to, the following matters, as to each of which defendants desire more definite particulars, and with respect to each of which the [105] Amended Complaint is defective:

1. What is the number of shares of capital stock of defendant Transamerica Corporation of which plaintiff is the holder, as alleged in paragraph III (p. 3, lines 17-21), and what was the total number of issued and outstanding shares of capital stock of Transamerica Corporation on the date of the commencement of this action?

2. Whether plaintiff has been a shareholder of Transamerica only since on or about March 7, 1929, as alleged in paragraph III (p. 3, lines 17-21), or whether, as alleged in paragraph XIX (p. 6, lines 25-27), she was a shareholder of said defendant at the time of each and all the transactions of which she complains, that is to say, including the matters complained of in paragraphs XXII to XXIX, inclusive (p. 10, line 10, to p. 16, line 19), many of which are there alleged to have occurred at dates prior to October 11, 1928, the date upon which Transamerica was organized, as alleged in paragraph I (p. 2, line 21), and before March 7, 1929.

3. What was the extent of the ownership of stock of defendant Transamerica Corporation and of defendants Amadeo P. Giannini, L. M. Giannini and John M. Grant, deceased, as alleged in paragraph XXI (p. 9, lines 18-20), and what were the periods of time during which such shares were held?

4. What was the extent and number of shares of stock of defendant Transamerica Corporation

as to which defendants Amadeo P. Giannini and L. M. Giannini held proxies, as alleged in paragraph XXI (p. 9, lines 18-20), and what were the periods of time during which such proxies were held?

5. What were the "various means and devices" by which it is alleged in paragraph XXI (p. 9, lines 18-25) defendant A. P. Giannini and others selected and named the officers and directors [106] of defendant Transamerica Corporation, and controlled and dominated its entire business policies and affairs.

6. Whether the members of the Board of Directors of defendant Transamerica, alleged in paragraph XXI (p. 9, line 18, to p. 10, line 8) to have been controlled and dominated and not to have exercised any independent judgment in the performance of their duties, at all times constituted a majority of the members of said Board of Directors, and if not at all times, then at what times?

7. Whether the defendants joining in this motion, or either or any of them, were directors of Bancitaly Corporation, and, if so, the date when each of them became such director, and the date when his term of office ceased.

8. Wherein and in what manner was the salary agreement beyond the scope of the powers of Bancitaly Corporation and in excess of the authority of its officials and Board of Directors, as alleged in paragraph XXIV (p. 11, lines 23-26)?

9. To what extent were the credit items referred to in paragraph XXV (p. 12, lines 3 to 18) in excess

of the actual and true net profits of Bancitaly Corporation, as also alleged in paragraph XXV (p. 12, lines 19 to 28, inclusive).

10. Of what did the false, fictitious, inflated and untrue book profits, alleged in paragraph XXV (p. 12, lines 28-29) consist. What was the extent thereof; and what is meant by the words "book profits?"

11. What were the dates and amounts of the several items and entries made in the corporate records and books of defendant Transamerica Corporation, as alleged in paragraph XXVII (p. 14, lines 3-12), and of the net profits of what period of time did such entries purport to be five per cent?

12. To what extent were the credit items referred to in [107] paragraph XXVII (p. 14, lines 3-12), in excess of five per cent of the actual and true net profits of Transamerica Corporation, as alleged in said paragraph XXVII (p. 14, lines 18-21)?

13. Whether, as alleged in paragraph XXVIII (p. 15, lines 2-14) sums purportedly payable to defendant Amadeo P. Giannini under said salary agreement were by him unearned and without consideration (p. 15, lines 11-12), or whether, as alleged in paragraph XXI (p. 9, lines 18-25), during all of the times covered by said salary agreement since the incorporation of Transamerica Corporation, defendant Amadeo P. Giannini controlled and determined its entire business, policies and affairs.

14. How, and in what manner, did the credits

referred to in paragraph XXVIII (p. 15, lines 2-14) constitute unauthorized and illegal corporate liabilities of Transamerica Corporation as in said paragraph alleged.

15. What was the date or dates, and the amount or amounts in which payments were made to defendant Amadeo P. Giannini during the years 1927 to 1939, inclusive, as alleged in paragraph XXIX (p. 15, lines 16-24), and particularly the time and amount of such payments made during the period that it is alleged the defendants joining in this motion were directors or officers of Transamerica Corporation.

16. What were the false, misleading and untrue names and designations under which payments and disbursements to defendant Amadeo P. Giannini are alleged in paragraph XXX (p. 17, lines 4-10) to have been "covered, disguised and concealed?"

17. What acts alleged in the complaint were committed by the defendants joining in this motion, and the time, facts and circumstances connected therewith?

In respect to this motion and the specifications therein contained, this motion is made in the alternative, and without [108] prejudice to the Motion to Strike, based in whole or in part on the same grounds.

The foregoing motion will be made upon the ground that the First Amended Complaint lacks definiteness in the particulars specified, and is defective in that regard, and that the details desired by the defendants joining in this motion, and each

of them, are necessary to enable them and each of them to properly prepare their or his responsive pleading, and to prepare for trial.

MOTION TO STRIKE

IV. For an order striking the following matters from the First Amended Complaint:

1. All of paragraphs XXII to XXV, inclusive, in which is set forth an alleged cause of action with regard to transactions alleged to have been illegally entered into by officers and directors of Bancitaly Corporation, of which corporation none of the defendants joining in this motion are alleged in the complaint to have been either officers or directors.

2. All paragraphs XXXI to XXXIV, inclusive, in which is set forth a cause of action based upon transactions between Transamerica and Walston & Co., and which transactions are alleged to have taken place in 1933, after each of the defendants joining in this motion had ceased to be a director or officer of Transamerica Corporation.

3. All of paragraphs XXXV to XLIII, inclusive, with reference to dealings between Transamerica Corporation and the Smith-Mallory Trust Syndicate, Pacific Coast Mortgage Company and Associated American Distributors, all of which transactions are alleged in said complaint to have occurred subsequent to the time when each of the defendants joining in this motion had ceased to be an officer or director of Transamerica Corporation.

4. All of paragraphs XLIV and XLV. [109]

Said motion will be made upon the ground that

the matters above specified are, as to the defendants joining in this motion, redundant, immaterial and impertinent.

KEYES & ERSKINE

By HERBERT W. ERSKINE

HERBERT W. ERSKINE

LOUIS FERRARI

Attorneys for Defendants A.

H. Giannini, William E.

Blauer, Leon Bocqueraz, E.

H. Clark, Charles N. Hawk-

ins, W. F. Morrish, A. J.

Mount, Alfred E. Sbar-

boro, James A. Bacigalupi,

George A. Webster, C. R.

Bell, W. W. Garthwaite and

Louis Ferrari, jointly and

severally.

The address of said attorneys is:

625 Market St.,

San Francisco, California.

NOTICE OF MOTION

To Vincent A. Marco, Esq., Percy V. Clibborn, Esq.,
Homer N. Boardman, Esq., and Joseph A. Rus-
kay, Esq., Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motions on for hearing before this Court (Honorable Harry A. Hollzer, District Judge) at Court Room No. 2, Post Office and Federal Courts Building, City of Los Angeles, Cali-

fornia, on the 21st day of May, 1942, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

You Will Further Take Notice that all of said motions will be made upon the files and records herein, including the First Amended Complaint, said motions and this notice.

Please Take Further Notice that defendants A. H. Giannini, [110] William E. Blauer, Leon Bocqueraz, E. H. Clark, Charles N. Hawkins, W. F. Morrish, A. J. Mount, Alfred E. Sbarboro, James A. Bacigalupi, George A. Webster, C. R. Bell, W. W. Garthwaite and Louis Ferrari will, jointly and severally, rely upon points and authorities in support of said motions, a copy of which is herewith served upon you.

KEYES & ERSKINE

By HERBERT W. ERSKINE

HERBERT W. ERSKINE

LOUIS FERRARI

Attorneys for Defendants A.

H. Giannini, William E.

Blauer, Leon Bocqueraz, E.

H. Clark, Charles N. Hawk-

ins, W. F. Morrish, A. J.

Mount, Alfred E. Sbarboro,

James A. Bacigalupi,

George A. Webster, C. R.

Bell, W. W. Garthwaite and

Louis Ferrari, jointly and

severally.

Address: 625 Market St., San Francisco, California. [111]

Receipt of a copy of the within is hereby admitted
this 4th day of May, 1942.

VINCENT A. MARCO,
PERCY V. CLIBBORN,
HOMER N. BOARDMAN,
JOSEPH A. RUSKAY,
By PERCY V. CLIBBORN
Attorneys for Plaintiff

[Endorsed]: Filed May 4, 1942. [112]

[Title of District Court and Cause.]

MOTION OF DEFENDANT BANK OF AMER-
ICA NATIONAL TRUST & SAVINGS AS-
SOCIATION, AS ADMINISTRATOR-
WITH-THE-WILL-ANNEXED OF THE
ESTATE OF JOHN M. GRANT, DE-
CEASED,

- (1) TO DISMISS THE ACTION;
- (2) FOR A MORE DEFINITE STATEMENT
OR BILL OF PARTICULARS.

The defendant Bank of America National Trust
& Savings Association as Administrator-with-the-
Will-Annexed of the Estate of John M. Grant, de-
ceased, moves the court as follows:

MOTION TO DISMISS

I. To dismiss the action because the First Amended Complaint fails to state a claim against defendant upon which relief can be granted. [113]

MOTION FOR A MORE DEFINITE STATEMENT OF BILL OF PARTICULARS

II. For an order requiring plaintiff to make a more definite statement of, or a bill of particulars in respect to, the following matters, as to each of which defendant desires more definite particulars and in respect to each of which the First Amended Complaint is defective.

1. What is the number of shares of capital stock of defendant Transamerica Corporation of which plaintiff is the holder, as alleged in paragraph III (p. 3, lines 17-21), and what was the total number of issued and outstanding shares of capital stock of Transamerica Corporation on the date of the commencement of this action?

2. Whether plaintiff has been a shareholder of Transamerica only since on or about March 7, 1929, as alleged in paragraph III (p. 3, lines 17-21), or whether, as alleged in paragraph XIX (p. 6, lines 25-27), she was a shareholder of said defendant at the time of each and all of the transactions of which she complains, that is to say, including the matters complained of in paragraphs XXII to XXIX, inclusive (p. 10, line 10, to p. 16, line 19), some of which are there alleged to have occurred at dates prior to October 11, 1928, the date upon which Transamerica Corporation was organized, as alleged

in paragraph I (p. 2, line 21) and before March 7, 1929.

3. What was the extent of the ownership of stock of defendant Transamerica Corporation of defendants Amadeo P. Giannini and L. M. Giannini, and John M. Grant, deceased, as alleged in paragraph XXI (p. 9, lines 18-20), and what were the periods of time during which such shares were held.

4. What was the extent and number of shares of stock [114] of defendant Transamerica Corporation as to which defendants Amadeo P. Giannini and L. M. Giannini held proxies, as alleged in paragraph XXI (p. 9, lines 18-20), and what were the periods of time during which such proxies were held.

5. What were the "various means and devices" by which it is alleged in paragraph XXI (p. 9, lines 18-25), defendant Amadeo P. Giannini and others selected and named the officers and members of the Board of Directors of defendant Transamerica Corporation and controlled and dominated and determined its entire business policies and affairs.

6. Whether the members of the Board of Directors of defendant Transamerica, alleged in paragraph XXI (p. 9, line 18 to p. 10, line 8) to have been controlled and dominated and not to have exercised any independent judgment in the performance of their duties, at all times constituted a majority of the members of said Board of Directors, and if not at all times, then at what times.

7. Wherein and in what manner and by reason of what facts did each director of Bancitaly Cor-

poration, other than defendant Amadeo P. Giannini, become and remain the dummy agent and alter ego of said defendant, as alleged in paragraph XXIII (p. 11, lines 7-8).

8. Wherein and in what manner was the salary agreement beyond the scope of the corporate powers of Bancitaly Corporation and in excess of the authority of its officials and Board of Directors, as alleged in paragraph XXIV (p. 11, lines 23-26).

9. To what extent were the credit items referred to in paragraph XXV (p. 12, lines 3-18) in excess of five per cent of the actual and true net profits of Bancitaly Corporation, as also alleged in said paragraph (p. 12, lines 19-28).

10. Of what did the false, fictitious, inflated and untrue book profits, alleged in paragraph XXV (p. 12, lines 28-29), consist; what was the extent thereof; and what is meant by the words [115] "book profits".

11. Which of the entries alleged in paragraph XXVII (p. 13, lines 25-26) were made prior to March 7, 1929, the date upon which plaintiff became a stockholder of defendant Transamerica Corporation, what was the period of time to which the entries related, and what was the date and amount of each of such entries.

12. What were the dates and amounts of the several items and entries made in the corporate records and books of defendant Transamerica Corporation, as alleged in paragraph XXVII (p. 14, lines 3-12), and of the net profits of what period of time did such entries purport to be five per cent.

13. To what extent were the credit items, referred to in paragraph XXVII (p. 14, lines 3-12), in excess of five per cent of the actual and true net profits of Transamerica Corporation, as also alleged in paragraph XXVII (p. 14, lines 18-21).

14. Of what did the false, fictitious, inflated and untrue book profits alleged in paragraph XXVII (p. 14, lines 22-23) consist; what was the extent thereof; and what is meant by the words "book profits".

15. Whether, as alleged in paragraph XXVIII (p. 15, lines 2-14), sums purportedly payable to defendant Amadeo P. Giannini under said salary agreement "were by him unearned, and for which he gave no consideration" (p. 15, lines 11-12), or whether as alleged in paragraph XXI (p. 9, lines 18-25), during all of the times covered by said salary agreement since the incorporation of Transamerica Corporation defendant Amadeo P. Giannini controlled and determined its entire business policies and affairs.

16. How and in what manner did the credits referred to in paragraph XXVIII (p. 15, lines 2-14) constitute unauthorized and illegal corporate liabilities of Transamerica Corporation as in said paragraph alleged. [116]

17. What were the date or dates and the amount or amounts in which payments were made to defendant Amadeo P. Giannini during the years 1927 to 1931, inclusive, as alleged in paragraph XXIX (p. 15, lines 16-24); which of said payments were made before October 11, 1928, the date upon which de-

fendant Transamerica Corporation was organized (p. 2, line 21), and which were made before March 7, 1929, the date upon which plaintiff became a shareholder of defendant Transamerica Corporation, as alleged in paragraph III (p. 2, line 18).

18. What were the false, misleading and untrue names and designations under which payments and disbursements to defendant Amadeo P. Giannini are alleged in paragraph XXX (p. 17, lines 4-10) to have been covered, disguised and concealed.

19. What were the dates in 1932, 1933, 1934, 1935, 1936, 1937, and 1938, upon which Transamerica paid brokerage fees to defendant Walston & Co., as alleged in paragraph XXXIII (p. 18, lines 24-32); what was the amount of each payment; and were such fees the regular and usual fees.

20. What was the date and amount of each sum of money paid by Transamerica Corporation to Walston & Co. for use as capital and for other purposes, as alleged in said paragraph XXXIII (p. 19, lines 1-2).

21. How and in what manner were defendants Amadeo P. Giannini or his testator Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its shareholders, as alleged in paragraph XXXIII (p. 19, lines 14-21).

22. What was the private and confidential knowledge and information, acquired by defendants Amadeo P. Giannini and L. M. Giannini in their capacity as officers and directors of defendant Transamerica

Corporation and used for speculative operations, as [117] alleged in paragraph XXXVII (p. 22, lines 2-8).

23. What means and methods were used to accomplish the payments and advances from Transamerica Corporation to Bankitaly Mortgage Company, as alleged in paragraph XXXVIII (p. 22, line 10, to p. 23, line 2).

24. How and in what manner were Amadeo P. Giannini, L. M. Giannini and Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its shareholders, as alleged in paragraph XXXIX (p. 24, lines 17-20).

25. How and in what manner were Amadeo P. Giannini, L. M. Giannini and Virgil D. Giannini, now deceased, or any of them, unjustly enriched, and how was the alleged unjust enrichment to the detriment of Transamerica Corporation and its shareholders, as alleged in paragraph XLI (p. 26, lines 14-18).

26. Who is Associated American Distributors, Inc. mentioned in paragraph XLII (p. 26, line 28; p. 27, lines 2, 20-21 and 24) and paragraph XLIII (p. 28, lines 5-6), and what was its relationship, if any, to the defendant Transamerica Corporation.

27. What were the dates and amounts of the losses of Associated American Distributors, Inc., alleged in paragraph XLII (p. 27, lines 2-3).

28. What were the dates and amounts of the payments by defendant Transamerica Corporation

to Associated American Distributors, Inc., alleged in paragraph XLII (p. 27, lines 7-8).

29. What were the false, fictitious and misleading entries and records by which the transfer and use of funds of Transamerica Corporation were disguised, covered and concealed, as alleged in paragraph XLIII (p. 28, lines 17-18).

30. What other persons were directors of Transamerica Corporation and Bankitaly Corporation other than the persons named as [118] defendants, during the period from October 11, 1928, to January 1, 1939, and the dates of their respective incumbents as directors.

The foregoing motion will be made upon the ground that the First Amended Complaint lacks definiteness in the particulars specified and is defective in that regard, and that the details desired by defendant are necessary to enable it to properly prepare its responsive pleadings and to prepare for trial.

GEORGE D. SCHILLING

G. L. BERREY

Attorneys for defendant Bank
of America National Trust
& Savings Association as
Administrator - with - the -
Will-Annexed of the Estate
of John M. Grant, deceased.

NOTICE OF MOTION

To Vincent A. Marco, Esq., Percy V. Clibborn, Esq.,
Homer N. Boardman, Esq., and Joseph A. Rus-
kay, Esq., Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motions on for hearing before this Court (Honorable Harry A. Hollzer, District Judge) at Court Room No. 2, Post Office and Federal Courts Building, City of Los Angeles, California, on the 21st day of May, 1942, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

You Will Further Take Notice that both of said motions will be made upon the files and records herein, including the First Amended Complaint, said motions and this notice.

Please Take Further Notice that defendant Bank of America [119] National Trust & Savings Association, as Administrator-with-the-Will-Annexed of the Estate of John M. Grant, deceased, will rely upon points and authorities in support of said motions, a copy of which is herewith served upon you.

GEORGE D. SCHILLING

G. L. BERREY

Attorneys for defendant, Bank
of America, etc.

Address: 410 Bank of America Building,
Los Angeles, California.
TRinity 4353 [120]

Received Copy of the Within motion this 4th day of May, 1942.

VINCENT ANTHONY MARCO,
PERCY V. CLIBBORN,
HOMER W. BOARDMAN and
JOSEPH A. RUSKAY

By PERCY V. CLIBBORN

Attorney for Plaintiff.

[Endorsed]: Filed May 4, 1942. [121]

At a stated term to-wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 25th day of June, in the year of our Lord one thousand nine hundred and forty-two.

Present: The Honorable: Harry A. Hollzer District Judge.

[Title of Cause.]

No. 1490-H Civil

HEARING ON MOTIONS TO DISMISS, ETC.

This cause coming on for further hearing on motions to dismiss, etc. of the following defendants: Amadeo P. Giannini, individually and as Executor of the Last Will and Testament of Virgil D. Giannini, deceased, for whom T. B. Cosgrove and John

N. Cramer, Esqs., are present as counsel; Herbert E. White for whom Robert A. Odell, Esq., is present as counsel; L. M. Giannini, individually, and as an alleged partner of Walston & Co., et al., for whom Russ Avery, Esq., is present as counsel; A. H. Giannini, et al., for whom Herbert W. Erskine and Louis Ferrari, Esqs., are present as counsel; Bank of America National Trust & Savings Association, as Administrator-with-the-Will-Annexed of the Estate of John M. Grant, deceased, for whom G. L. Berrey, Esq., is present as counsel; Walston & Co., a co-partnership, et al., for whom Claude N. Rosenberg, Esq., is present as counsel; Vincent A. Marco, Percy V. Clibborn, Homer N. Boardman, Esqs., being present as counsel for the plaintiff; and A. H. Bargion, Court Reporter, being present and reporting the proceedings:

Attorney Boardman argues further in opposition to all motions.

At 11:40 A. M. court recesses. At 11:45 A. M. court reconvenes herein. Attorney Boardman resumes argument.

At 1:03 P. M. court recesses until 2 P. M. At 2:05 P. M. court reconvenes herein. Attorney Boardman argues further in opposition to all motions.

The Court makes a statement re its present views.

It is ordered that the plaintiff serve and file amended complaint within sixty (60) days and that the defendants have thirty (30) days thereafter to plead thereto. [122]

At a stated term, to-wit: The February Term, A.D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 17th day of August, in the year of our Lord one thousand nine hundred and forty-two.

Present: The Honorable: C. E. Beaumont District Judge.

[Title of Cause.]

No. 1490-H Civil

ORDER EXTENDING TIME TO FILE
AMENDED COMPLAINT

Homer N. Boardman, Esq., counsel for the plaintiff, now comes before the Court and moves for extension of time to file amended complaint.

It is ordered that time for filing amended complaint be, and it hereby is, extended to August 21, 1942, inclusive. [123]

[Title of District Court and Cause.]

SECOND AMENDED COMPLAINT

[124]

Comes Now the above named plaintiff complaining of the above named defendants, and for her cause of action alleges upon information and belief, except as to paragraphs III, V, XVIII, XLI, and XLII, which plaintiff alleges upon knowledge, as follows:

I.

Defendant, Transamerica Corporation, has been since on or about the 11th day of October, 1928, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and at all times mentioned herein transacting business within the State of California, having its principal office and place of business in said state in the City and County of San Francisco.

II.

Defendant, Transamerica Corporation, has been at all times since its incorporation, and was at all times herein mentioned, and now is, duly authorized to engage in and engaged in numerous business enterprises, including among others a general business involving and devoted to financial, investment, brokerage, [125] insurance, and real estate enterprises, and also a general business of organizing, acquiring, holding, owning, controlling, maintaining and operating, other corporations and associations as its corporate subsidiaries, instrumentalities and departments, in the operation of its said business enterprises, and including among others, the following corporate subsidiaries, departments and instrumentalities, to-wit:

Bank of America National Trust and Savings Association, a national banking association ;

Bankitaly Company of America, a corporation ;

Corporation of America, a corporation ;

Transamerica Insurance Holding Company, a corporation ;

Transamerica General Holding Company, a corporation;

Transamerica General Corporation, a corporation;

American Brokerage Company, a corporation;

Transamerica Service Corporation, a corporation;

Bankamerica Company, a corporation;

Inter-Coast Trading Company, a corporation;

Bankitaly Mortgage Company, a corporation;

Pacific Coast Mortgage Company, a corporation;

Associated American Distributors, Inc., a corporation;

Western States Corporation, a corporation;

Bank of America Company, a corporation;

Service Corporation, a corporation;

California Lands Inc., a corporation;

Capital Company, a corporation;

Inter-American Corporation, a corporation;

Occidental Life Insurance Company, a corporation;

Pacific National Fire Insurance Company, a corporation;

Commercial Holding Fire Insurance Company, a corporation;

Transamerica Bank Holding Company, a corporation;

Inter-Continental Corporation, a corporation;

[126]

Bancitaly Corporation, a corporation; and

National Bankitaly Company, a corporation.

III.

Plaintiff is, and has been at all times since on or about the 7th day of March, 1929, a shareholder of defendant Transamerica Corporation, and is the owner and holder of fifty-seven (57) shares of its capital stock, and as such shareholder institutes this action on behalf of herself, said corporation, and all other shareholders thereof similarly situated.

IV.

Bank of America National Trust & Savings Association, a national banking association, sued as a defendant herein as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, deceased, is, and was at all times mentioned herein, a national banking association duly organized, acting and existing, under and by virtue of the laws of the United States, with its principal offices and places of business in the City and County of San Francisco, and the City of Los Angeles, County of Los Angeles, in the State of California, and then and there duly authorized to engage and engaging in a general banking and trust company business.

V.

Plaintiff is, and was at all times mentioned herein, a citizen and resident of the State of New York.

VI.

Defendant Transamerica Corporation, a corporation, is and was at all times mentioned herein, a citizen and resident of the State of Delaware.

VII.

Defendant co-partnership Walston & Co., is and was and at all times mentioned here, a co-partnership composed of two or more persons associated and transacting business under said common [127] name, the members thereof, among others, being the following individual defendants herein named, to-wit: Charles De Y. Elkus, Vernon C. Walston, William S. Hoelscher, C. J. Smith, Clifford P. Hoffman, Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman, and Virgil D. Giannini, now deceased.

VIII.

Defendant Walston & Co., a co-partnership is, and at all times mentioned herein was, engaged in a security brokerage business in the State of California, with its principal office and place of business in the City and County of San Francisco, and at all such times was and now is a citizen and resident of the State of California.

IX.

Plaintiff is ignorant of the true names of the defendants designated and sued herein by and under fictitious names, and for that reason they are sued herein under fictitious names; and plaintiffs prays that when their true names are ascertained that they may be inserted herein, and that they may thereupon and thereafter be proceeded against in all subsequent proceedings in this action under their true names.

The aforesaid persons, corporations and associations, sued herein as defendants under fictitious names, and each of them, participated with the other defendants in all and singular the acts and wrongs herein alleged and complained of.

X.

Each and all of the individual defendants named herein are citizens and residents of the State of California. Defendants, A. H. Giannini, Russ Avery and C. R. Bell all reside in Los Angeles County, and W. N. Lagomarsino resides in the County of Ventura, in said state; and defendant Gordon Gray resides in the County of San Diego, in said state.

[128]

XI.

On or about the 28th day of April, 1938, the aforesaid Virgil D. Giannini mentioned in paragraph VII herein, died testate in the City and County of San Francisco, State of California, and thereafter the aforesaid defendant, Amadeo P. Giannini, was appointed the Executor of his Last Will and Testament and estate, and thereupon duly qualified as such Executor and has ever since been and still is acting as such.

XII.

On or about the 25th day of March, 1941, the aforesaid John M. Grant, mentioned and named in paragraph XIX hereof, died testate in the City and County of San Francisco, State of California, and thereafter the defendant, Bank of America National

Trust & Savings Association, a national banking association, was duly appointed the Administrator-With-The-Will-Annexed of his estate, and there-upon duly qualified as such Administrator, and ever since has been and still is acting as such.

XIII.

Defendant Amadeo P. Giannini, as Executor of the Last Will and Testament of Virgil D. Giannini, deceased, is, and at all times mentioned herein was, a citizen and resident of the State of California.

XIV.

Defendant Bank of America National Trust & Savings Association, a national Banking association, as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, deceased, is, and at all times mentioned herein was, a citizen and resident of the State of California.

XV.

The jurisdiction of this Court depends upon a diversity of citizenship between the plaintiff and the defendants. [129]

XVI.

This action is not a collusive one instituted for the purpose of conferring on a Court of the United States jurisdiction of an action of which it would not otherwise have cognizance.

XVII.

The matter in controversy, exclusive of interest and costs, exceeds the sum or value of Three Thousand and no/100 Dollars (\$3,000.00).

XVIII.

Plaintiff was a shareholder of the defendant, Transamerica Corporation, at the time of each and all of the transactions of which she complains herein.

XIX.

On or about the 11th day of October, 1928, all of the individual defendants named and described herein, together with the aforesaid Virgil D. Gianini and John M. Grant, both now deceased, and each of them, together with certain other persons not named or sued as defendants herein, but who are referred to hereinafter, and named and described in paragraph XXIII hereof, together with other persons whose names are not known to the plaintiff herein, then and there conspired and confederated with each other, and have ever since so conspired and confederated to control, operate, maintain, conduct and use defendant Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, and its and their corporate business and affairs, for their own private, personal and individual, use and benefit, and to the detriment of said defendant corporation, its corporate subsidiaries, departments and instrumentalities, and its shareholders, and for such purpose, and without legal right or authority, to wrongfully

appropriate to their own individual use and benefit, the monies, funds, assets and property, of said defendant, Transamerica Corporation, and its corporate subsidiaries, departments [130] and instrumentalities, and also without legal right or authority, to wrongfully use the monies, funds, assets, property and facilities thereof, and also to use their official position with said defendant, Transamerica Corporation, and the confidential and special knowledge gained thereby, for their own individual use and benefit, and for the purpose of effecting such common design; and as a part of said conspiracy and confederation, said conspiring defendants and persons, and each of them, further agreed by and between themselves as follows:

(a) that said conspiring defendants and persons should and would at all times obtain, have and maintain, control of the issued and outstanding voting shares of the capital stock of defendant Transamerica Corporation, and at all times, by virtue of such control, select, elect, maintain control of, and dominate, all of the individual members of all its Boards of Directors, and all its principal officers, and control, dominate, dictate, determine and direct all its business, affairs, and policies.

(b) that a majority of or all the individual members of all the Boards of Directors and a majority or all of the principal officers of defendant Transamerica Corporation would and should at all times be selected, elected and maintained, from the membership of said conspiracy; and that in the event any of the individual members of all the

Boards of Directors of defendant Transamerica Corporation so selected, elected and maintained, were not members of said conspiracy, that they would and should at all times be entirely and completely dominated and controlled by said conspiring defendants and persons to the extent that each of such non-conspiring individual members of such Boards of Directors, if any, would and should at all times be a puppet or dummy for and the alter ego of said conspiring defendants and persons, and would and should at all times, in the performance of their official duties, and all corporate acts and transactions, respond entirely and completely to [131] the will and desire of said conspiring defendants and persons, and exercise no independent judgment nor discretion concerning the same.

(c) that by and through such Boards of Directors so selected, elected, controlled and maintained, defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, would and should be caused to apply and use its and their monies, funds, property and facilities to organize, acquire, finance and maintain, various private, personal and individual business enterprises to be owned and conducted by and for the personal and private interests, gain and profit of, said conspiring defendants and persons, or some of them;

(d) that by and through such Boards of Directors so selected, elected and maintained, defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, would

and should be caused to assume, make and enter into, fraudulent, fictitious and pretended, contracts and agreements, falsely purporting to evidence legal and valid transactions with, and legal rights of, the said conspiring defendants and persons, or some of them, to be used as subterfuges, and to give color of right to transactions whereby large and substantial sums of money belonging to defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, would and should, from time to time, without legal right or authority, be withdrawn, misappropriated and converted, by said conspiring defendants and persons, or some of them, to their private, individual and secret use, benefits, gain, and profit.

(e) that said conspiring defendants and persons would and should, from time to time, by the use of their official positions with defendant Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, and the confidential and special knowledge gained thereby, manipulate the capital stock of defendant Transamerica Corporation upon the various national [132] securities exchanges, and engage in secret, private and personal, speculations therein, and the acquirement of secret, private and individual gain and profit thereby, and that to facilitate and effect said objects, such Boards of Directors, so selected, elected and maintained, by said conspiring defendant and persons, would and should, without legal right or authority, cause defendant Transamerica Corporation,

and its corporate subsidiaries and departments, to apply and use its and their assets, monies, funds and property, to finance all such manipulations and speculations and pay all expenses thereof and the losses sustained thereby.

(f) that by and through such Boards of Directors of defendant Transamerica Corporation so selected, elected, controlled and maintained, the investment, security brokerage and other businesses of said defendant Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, would and should, without legal right or authority, be diverted and transferred to other corporations, associations and co-partnerships, which would and should be secretly organized, acquired, owned, controlled and operated by said conspiring defendants, and other persons, or some of them, for their individual use, benefit, and private secret profit.

(g) that in order to give the corporate transactions and acts to be performed in the execution by said conspiring defendants and other persons of their said conspiracy the appearance of ordinary routine business transactions and not transactions of such importance as to require the careful consideration of all of the members of the Board of Directors, and that said transactions should not have the appearance of being the result of a carefully planned scheme, that some of the directors of defendant Transamerica Corporation should propose, and affirmatively present and support the authorization of such transactions and acts, and that as long

as a quorum of the Board of Directors was present on such occasions, that [133] others of said conspiring directors, should passively permit and acquiesce therein by remaining absent from the directors meetings when and where such corporate acts and transactions were to be authorized.

(h) that each and all of the corporate transactions and acts contemplated and deemed necessary by said conspiring defendants and persons to effect the common design of their said conspiracy and confederation would and should, at all times, be covered, disguised and concealed from all shareholders and directors of defendant Transamerica Corporation other than said conspiring defendants and persons, and to effect such concealment, that all of such corporate transactions and acts would and should fail to truthfully appear upon, or be reflected by, the corporate records and books of account of defendant Transamerica Corporation, or its corporate subsidiaries, departments and instrumentalities, but on the other hand, would and should be entirely withheld therefrom, or included therein under, and camouflaged by, false, fictitious, untrue, and misleading names, designations, and accounts, wherein and whereby the individual, private, and secret interests of the conspiring defendants and other persons therein, would and should be entirely and completely concealed.

(i) that in the event said conspiring defendants and persons for any particular year or other period of time, would or should fail to have and maintain

a control of the voting shares of the capital stock of the defendant Transamerica Corporation, and the selection, election and maintenance of its directors, then nevertheless, the defendant's said conspiracy and confederation, would and should not terminate, but thereafter, that said conspiring defendants and other persons, would and should attempt to regain control of such voting stock of said defendant, Transamerica Corporation, and if successful in so doing, then said conspiracy and confederation, and the common design and understanding thereof [134] as heretofore set forth, would and should continue to exist, function and be effective, as originally planned and agreed, and would and should continue indefinitely until completely and successfully terminated.

XX

Thereafter, from time to time, and for the purpose of effecting the said conspiracy and confederation, and to carry out the common purpose and design thereof as heretofore set forth, the said defendants and persons committed and performed the following acts, and engaged in the following transactions and series of transactions, as set forth in the succeeding paragraphs hereof, namely, XXI to XL, inclusive.

XXI

At and during all of the times mentioned herein, and up to and including the date of the filing of this amended complaint, said defendants and persons, at all such times, procured, obtained, had, held, and

exercised full, complete and exclusive control of all of the issued and outstanding voting shares of capital stock of defendant Transamerica Corporation, and at and during all such times, by such control of said voting shares of stock, selected, named and elected, all the individual members of said defendant corporation's several Boards of Directors, and during all such times, wholly, fully, exclusively, and completely controlled, dominated, determined, and directed the entire business policies, and affairs of defendant Transamerica Corporation.

XXII

By and through the said control of the issued and outstanding voting shares of the capital stock of defendant Transamerica Corporation had and held by said defendants and persons, each of the following named individual defendants herein was from time to time duly elected a member of the Board of Directors of said defendant, Transamerica Corporation, and accepted and assumed [135] the corporate powers, duties and liabilities, of such office, and served and acted as a director of said corporation; and that said defendants were so elected on or about the approximate dates, and served as directors during the approximate periods of time, hereinafter set forth, plaintiff being unable to make a more definite or certain statement with respect thereto:

Name of Director	Elected and Held Office From on or About	Held Office To on or About
*Amadeo P. Giannini	Oct. 11, 1928 Feb. 15, 1932	Sept. 22, 1931 Mar. 26, 1942
	(and to present time)	
*James C. Bacigalupi	Oct. 11, 1928	Feb. 15, 1932
*P. C. Hale	Oct. 11, 1938	Sept. 22, 1931
L. M. Giannini	Jan. 8, 1929 Feb. 6, 1933	Mar. 26, 1931 Mar. 26, 1942
	(and to present time)	
A. H. Giannini	Jan. 8, 1929	Sept. 22, 1931
William E. Blauer	Jan. 8, 1929	Sept. 22, 1931
Leon Bocqueraz	Jan. 8, 1929	Sept. 22, 1931
Charges N. Hawkins	Jan. 8, 1929	Sept. 22, 1931
W. F. Morrish	Jan. 8, 1929	Sept. 22, 1931
A. J. Mount	Jan. 8, 1929	Sept. 22, 1931
Alfred E. Sbarboro	Jan. 8, 1929	Sept. 22, 1931
E. J. Nolan	Jan. 8, 1929	Sept. 22, 1931
Armando Pedrini	Jan. 8, 1929	Feb. 15, 1932
George A. Webster	Jan. 8, 1929 Sept. 17, 1929	Feb. 9, 1929 Sept. 22, 1931
C. R. Bell	Jan. 8, 1929	Sept. 4, 1931
W. W. Garthwaite	Feb. 9, 1929	Sept. 22, 1931
George N. Armsby	Jan. 20, 1930	Sept. 22, 1931
E. H. Clark	Jan. 20, 1930	Nov. 24, 1931
Louis Ferrari	Jan. 20, 1930	Sept. 22, 1931
V. Scialoja	March 26, 1931 April 6, 1932	Feb. 15, 1932 Nov. 19, 1933
[136]		
Charles De Y. Elkus	Feb. 15, 1932	Apr. 6, 1932
John M. Grant	Feb. 15, 1932	Mar. 25, 1941

*(Amadeo P. Giannini, James C. Bacigalupi and P. C. Hale, acted as directors for defendant, Trans-america Corporation, from the time of its incorporation, on or about October 11, 1928, until January 8, 1929, at which time the first meeting for the regular election of directors was apparently held, and at which time said three (3) directors were elected, together with various other directors also elected at said meeting).

Name of Director	Elected and Held Office From on or About	Held Office To on or About
A. J. Scampini	Feb. 15, 1932	Apr. 6, 1932
	Mar. 30, 1933	Aug. 6, 1939
Theodore M. Stuart	Feb. 15, 1932	Mar. 28, 1940
Russ Avery	Apr. 6, 1932	Mar. 26, 1942
	(and up to present time)	
P. A. Bricca	Apr. 6, 1932	Mar. 26, 1942
	(and up to present time)	
George J. De Martini	Apr. 6, 1932	Mar. 26, 1942
	(and up to present time)	
Gordon Gray	Apr. 6, 1932	Mar. 26, 1942
	(and up to present time)	
O. D. Hamlin	Apr. 6, 1932	Mar. 26, 1942
	(and up to present time)	
T. W. Harris	Apr. 6, 1932	Aug. 31, 1939
A. P. Jacobs	Apr. 6, 1932	Mar. 26, 1942
	(and up to present time)	
Chester H. Loveland	Apr. 6, 1932	Mar. 30, 1933
F. G. Stevenot	Apr. 6, 1932	Oct. 19, 1938
Herbert E. White	Apr. 6, 1932	Aug. 10, 1939
W. N. Lagomarsino	Aug. 22, 1932	Mar. 26, 1942
	(and up to present time)	

XXIII

By and through the said control of the issued and outstanding voting shares of the capital stock of defendant Trans- [137] america Corporation had and held by said defendants and persons, each of the following persons, although not sued as defendants herein, was from time to time duly elected a member of the Board of Directors of said defendant, Transamerica Corporation, and accepted and assumed the corporate powers, duties and liabilities of such office, and served and acted as a director of said corporation; and that said conspiring persons were so elected on or about the approximate dates, and served as directors during

the approximate periods of time, hereinafter set forth, plaintiff being unable to make a more definite or certain statement with respect thereto:

Name of Director	Elected and Held Office From on or About	Held Office To on or About
L. V. Belden	Jan. 8, 1929	Sept. 17, 1929
Edward C. Delafield	Jan. 8, 1929	Sept. 4, 1931
J. E. Rovensky	Jan. 8, 1929	Sept. 4, 1931
W. H. Snyder	Jan. 8, 1929	Feb. 8, 1930
Harry Bronner	May 29, 1929	Sept. 4, 1931
Hunter S. Marston	May 29, 1929	Sept. 22, 1931
Elisha Walker	May 29, 1929	Feb. 15, 1932
Paul D. Cravath	Jan. 20, 1930	Feb. 15, 1932
Jean Monnet	Jan. 20, 1930	Feb. 15, 1932
Georges Jouasset	July 15, 1930	Feb. 15, 1932
E. R. Tinker	Jan. 20, 1930	Sept. 22, 1931
H. P. Preston	Feb. 8, 1930	Sept. 4, 1931
Alvino Angelo	Mar. 26, 1931	Sept. 22, 1931
A. E. Carpenter	Mar. 26, 1931	Mar. 26, 1931
	Sept. 4, 1931	Oct. 1, 1931
F. R. Kerman	Mar. 26, 1931	Mar. 26, 1931
	Sept. 4, 1931	Oct. 1, 1931
C. T. Purdy	Mar. 26, 1931	Mar. 26, 1931
	Sept. 4, 1941	Sept. 22, 1931
L. H. Cook	Sept. 4, 1931	Oct. 1, 1931
[138]		
F. W. Allen	Sept. 22, 1931	Feb. 15, 1932
A. E. Cotting	Sept. 22, 1931	Feb. 15, 1932
H. O. Havemeyer	Sept. 22, 1931	Feb. 15, 1932
George Murmane	Sept. 22, 1931	Feb. 15, 1932
R. L. Redmond	Sept. 22, 1931	Feb. 15, 1932
Frederic C. Dumaine	Oct. 1, 1931	Feb. 15, 1932
Charles W. Nash	Oct. 1, 1931	Feb. 15, 1932
Fred W. Sargent	Oct. 1, 1931	Feb. 15, 1932
Edward I. Berry	Feb. 15, 1932	Apr. 6, 1932
George Buck	Feb. 15, 1932	Apr. 6, 1932
Ivan Culbertson	Feb. 15, 1932	Feb. 24, 1932
John C. Jury	Feb. 15, 1932	Apr. 6, 1932
Frank J. McCarthy	Feb. 15, 1932	Apr. 6, 1932
J. E. McClellan	Feb. 15, 1932	Apr. 6, 1932
Theodore Roche, Jr.	Feb. 15, 1932	Apr. 6, 1932

Name of Director	Elected and Held Office From on or About	Held Office To on or About
Herbert E. Salinger	Feb. 15, 1932	Apr. 6, 1932
Alexander L. Nichols	Feb. 15, 1932	Feb. 24, 1932
Edwin D. Stayton	Feb. 15, 1932	Feb. 24, 1932
R. C. Springer	Feb. 15, 1932	Feb. 15, 1932
Edwin D. Steel, Jr.	Feb. 15, 1932	Feb. 24, 1932
Fred L. Dreher	Feb. 24, 1932	Apr. 6, 1932
G. Ferro	Apr. 6, 1932	Apr. 26, 1932
Ercole H. Locatelli	Apr. 6, 1932	Feb. 6, 1933
Jas. F. Cavagnaro	Mar. 29, 1934	Dec. 30, 1938
	Mar. 26, 1932	to present time
W. W. Douglas	Mar. 28, 1940	Dec. 13, 1940
E. D. Woodruff	Mar. 28, 1940	Mar. 26, 1942
	(and to present time)	
R. P. A. Everard	Mar. 27, 1941	Mar. 26, 1942

XXIV

At and during all of such times heretofore mentioned, [139] each of the individual members, if any, of all such several Boards of Directors of defendant Transamerica Corporation who was not or did not become a member of said conspiracy and confederation, was a puppet, dummy, and the alter ego of said defendants and persons, and by them at all such times, wholly and completely, controlled, directed, dominated, to the end and to the extent that in the performance of the official duties of each thereof, and in all the corporate acts and transactions of defendant Transamerica Corporation, including all the corporate acts and transactions herein set forth, said dummy directors, and each of them, exercised no independent judgment or discretion, but upon and at all such times, and in all such corporate acts and transactions, responded to and reflected the will and desire of said defendants and persons.

XXV

At and during all of said times each of the individual members, if any, of such several Boards of Directors of defendant Transamerica Corporation who was not, or did not become, a member of said conspiracy, or a puppet and dummy director as hereinbefore in paragraph XXIV alleged, either failed to discover any of the wrongful acts herein complained of, or, on the other hand, having discovered the same, at all times thereafter, knowingly and in complete disregard of his official duties, wholly failed to take action to redress or prevent the continuance of such wrongs, or to cause such action to be taken.

XXVI

On or about the 25th day of May, 1929, said defendant and persons, acting by and through their said Board of Directors of defendant Transamerica Corporation and without legal right or authority, caused said corporation and its corporate subsidiaries, departments and instrumentalities, to acquire, and absorb all of the capital stock, and assets of a certain corporation theretofore owned, operated, maintained and controlled by defendants Amadeo P. Giannini, P. C. Hale, and James A. Bacigalupi, and other persons, [140] and known and described as Bancitaly Corporation, and appear to assume as its own obligations certain pretended, fraudulent, and fictitious liabilities of said Bancitaly Corporation, including a certain pretended, fraudulent and fictitious, salary agreement by and between defendant Amadeo P. Giannini and said Bancitaly Corporation, to the effect that for his personal services

to be rendered as president of said corporation, said Amadeo P. Giannini should receive and be paid 5% of the net profits of said corporation, per annum, with a guaranteed minimum of One Hundred Thousand Dollars (\$100,000.00) per annum, commencing January 1, 1927, in lieu of salary; and also including certain pretended, fraudulent and fictitious, credit entries made pursuant thereto, then appearing under false and fictitious names and designations upon the books of account of said Bancitaly Corporation, in favor of defendants Amadeo P. Giannini, L. M. Giannini, and the aforesaid Virgil D. Giannini (now deceased), in substantial sums, aggregating approximately Nine Hundred and Twenty-five Thousand Dollars (\$925,000.00), all of which was so caused by the said defendants and persons, for the purpose and with the intent of each of them to thereafter use said pretended salary agreement and credit entries as subterfuges and instrumentalities by and through which to unjustly enrich themselves, and enhance their personal and individual interests, and particularly to enhance the personal and individual interests of and unjustly enrich said defendants, Amadeo P. Giannini and L. M. Giannini, and the said Virgil D. Giannini (now deceased), to the detriment of defendant Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities, and shareholders, in the particulars hereinafter mentioned.

Said pretended, fraudulent and fictitious, liability of said Bancitaly Corporation, evidenced by said

salary agreement, had prior to the time of the transactions heretofore set forth in this paragraph, and during a period of time commencing on or about the [141] 13th day of April, 1927, and ending on or about the 25th day of May, 1929, been made, created, and established, by the said defendants, Amadeo P. Giannini, P. C. Hale, and James A. Bacigalupi, for the purpose of, and used as a subterfuge, and as an instrumentality evidencing apparent legal rights, to wrongfully obtain, appropriate, and convert the monies, funds, and assets of said Bancitaly Corporation to the individual use and benefit of said defendants, Amadeo P. Giannini and L. M. Giannini, and the said Virgil D. Giannini (now deceased), by computing the net profits of said Bancitaly Corporation upon false, fictitious, unearned and unrealized profits, and entering from time to time, upon its corporate books of account, amounts purporting to be 5% of such false, fictitious, unearned and unrealized net profits, as credit entries in favor of said defendants, Amadeo P. Giannini and L. M. Giannini, and the said Virgil D. Gannin (now deceased), including the said credit entries aggregating approximately Nine Hundred and Twenty-five Thousand Dollars (\$925,000.00) heretofore mentioned.

XXVII

During the period of time commencing on or about the 5th day of April, 1929, and ending on or about the 1st day of January, 1930, a more certain or definite statement thereof plaintiff being unable

to set forth, pursuant to said purported fraudulent and fictitious corporate liability evidenced by said salary agreement set forth in paragraph XXVI hereof, said defendants and persons, acting by and through their said Boards of Directors of defendant Transamerica Corporation, from time to time, and without legal right or authority, caused said defendant and its corporate subsidiaries, departments and instrumentalities, to make and enter certain purported, false, fraudulent and fictitious, credit entries in favor of the defendants, Amadeo P. Giannini and L. M. Giannini, and the aforesaid Virgil D. Giannini (now deceased), in substantial sums aggregating not less than Three Million, Seven Hundred Thou- [142] sand Dollars (\$3,700,000.00) upon the corporate records and books of account of said defendant, Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, as purported liabilities thereof, concerning all of which, plaintiff is unable to make a more definite or certain statement with respect to the dates and amounts of the several items of such credit entries.

Plaintiff further alleges with respect to the said credit entries and records aforesaid, that the total credit and each item thereof so entered and recorded upon the corporate records and books of account of defendant Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, in favor of the defendants, Amadeo P. Giannini and L. M. Giannini, and the said Virgil D. Gianinni (now deceased), was and is false, fraud-

ulent, fictitious and untrue, in that the same does not truly and correctly represent 5% of the actual and true net profits of said corporation and its corporate subsidiaries, departments and instrumentalities, for said period or any part thereof. but on the other hand, was by said defendants and persons, and each of them, knowingly computed upon false, fictitious, unearned and unrealized profits, and all of which was so caused to be done by said defendants and persons, for the purpose, and with the intent of each of them, to unjustly enrich themselves and enhance their personal and individual interests, and particularly to enhance the personal and individual interests of, and unjustly enrich the defendants, Amadeo P. Giannini and L. M. Giannini, and the said Virgil D. Giannini (now deceased), to the detriment of defendant Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities, and shareholders, in the particulars hereinafter mentioned.

XXVIII

During a period of time commencing on or about the 5th day of April, 1929, and ending on or about the 1st day of January, 1939, said defendants and persons, acting by and through their said [143] Boards of Directors of defendant Transamerica Corporation, and without legal right or authority, caused said defendant corporation and its corporate subsidiaries, departments and instrumentalities, to pay to the defendants Amadeo P. Giannini and L. M. Giannini, and the said Virgil D. Giannini (now

deceased), from time to time, substantial sums of money aggregating not less than approximately Three Million, Seven Hundred Thousand Dollars (\$3,700,000.00), on account of and by reason of said false, fraudulent, fictitious and untrue, credit entries heretofore set forth in paragraphs XXVI and XXVII hereof, the precise amount and dates of said payments being to plaintiff unknown, except with respect to a sum not less than approximately One Million, Two Hundred and Seventy-one Thousand, Six Hundred and Forty-seven Dollars (\$1,271,647.01) and One Cent, which plaintiff alleges was so caused to be paid by defendant Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, in the manner aforesaid, to the said defendants, Amadeo P. Giannini and L. M. Giannini, and the said Virgil D. Giannini (now deceased), in the approximate sums and amounts as follows:

- \$ 212,852.59 in and during the year 1930;
- \$ 266,977.71 in and during the year 1931;
- \$ 134,826.58 in and during the year 1932;
- \$ 132,896.92 in and during the year 1933;
- \$ 100,596.24 in and during the year 1934;
- \$ 251,952.03 in and during the year 1935;
- \$ 65,914.29 in and during the year 1936;
- \$ 58,284.37 in and during the year 1937;
- \$ 34,000.00 in and during the year 1938; and
- \$ 13,346.28 in and during the year 1939;

by reason of all of which the said defendants and persons, and particularly defendants Amadeo P. Giannini and L. M. Giannini, and Virgil D. Gian-

nini (now deceased), were from the funds and assets [144] of defendants Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, unjustly enriched to the serious and irremediable injury and detriment of said defendant corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders, to the extent of at least Three Million and Seven Hundred Thousand Dollars (\$3,700,000.00), the precise sum and amount thereof being to plaintiff unknown, and all of which the said defendants and persons, caused to be done with the intent of each of them to unjustly enrich themselves and enhance their personal and individual interests, and particularly to enhance the personal and individual interests of, and unjustly enrich, the said defendants Amadeo P. Giannini and L. M. Giannini and the said Virgil D. Giannini (now deceased), to the detriment of defendant Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders.

XXIX

During all of the times herein mentioned and involving all of the corporate transactions and acts herein set forth, the said defendants and persons, by and through their respective and several Boards of Directors, caused all such transactions and acts, and the general business and affairs of defendant Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, and its assets and liabilities, to appear and be reflected

by records and books of account kept, maintained, and manipulated by an involved, intricate and complex system of accounting, in conflict with the usual, customary, and proper and recognized principles of the science of accounting, and entirely beyond the knowledge and understanding of the plaintiff with respect to such subjects, and that the corporate transactions and acts herein set forth, involved in such corporate records and books of account with respect to the assets and liabilities of defendant Transamerica Corporation, its corporate subsidiaries, departments and [145] instrumentalities, set forth in paragraphs XXVI and XXVII hereof, and with respect to the payments and disbursements involved and set forth in paragraph XXVIII hereof, were at all times covered, disguised, concealed and camouflaged, by entries and records made under and by false, fictitious, misleading and untrue, names and designations not required by and in conflict with the usual, customary, proper and recognized principles of the science of accounting, and thus wholly and entirely concealed.

XXX

On or about the 17th day of December, 1932, at a time when defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, were actively engaged in and enjoying a substantial, profitable investment, security, and brokerage business, the said defendants and persons, acting by and through defendant L. M. Giannini and the said Virgil D. Giannini (now

deceased), for the purpose and with the intent on the part of each and all of them, without legal right or authority, to acquire and thereafter have and conduct said investment, security and brokerage business for their personal, private, individual and secret profit and gain, and to unjustly enrich themselves and enhance their personal and individual interests, and particularly to enhance the personal and individual interests of and unjustly enrich defendants, Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman and the said Virgil D. Giannini (now deceased), to the detriment of defendant Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders, caused the defendant co-partnership, Walston & Co., to be formed, organized and created, with the individual members thereof as set forth in paragraph VII thereof.

XXXI

At all times after the formation and organization of the said defendant co-partnership, Walston & Co., and during the years [146] 1933, 1934, 1935, 1936, 1937 and 1938, in the manner for the purpose heretofore set forth, said defendants and persons, by and through their said Boards of Directors of defendant Transamerica Corporation, and without legal right or authority, caused said defendant, Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, to transfer and divert all of the said investment, security and brokerage business thereof, and of which said Boards of Directors then and there had and

exercised management and control, to the said defendant co-partnership, Walston & Co., and all of which was from time to time during said years accomplished by said defendants and persons, with the intent of each of them to unjustly enrich themselves and enhance their personal and individual interests and particularly to enhance the personal and individual interests of and unjustly enrich the defendants, Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman and the said Virgil D. Giannini (now deceased), to the detriment of defendant Transamerica Corporation and its corporate subsidiaries, departments, instrumentalities and shareholders, in the particulars hereinafter mentioned.

XXXII.

In and during the said years 1933, 1934, 1935, 1936, 1937 and 1938, said defendants and persons, by and through their Boards of Directors of defendant Transamerica Corporation without legal right or authority, caused said defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, from time to time, to pay and disburse from the funds, assets and property thereof, to said defendant co-partnership, Walston & Co., large and substantial sums of money as brokerage and other fees with respect to security, corporate stock and other transactions rendered in connection with the business so diverted and transferred as set forth in paragraph XXXI hereof, which at all such times belonged to defendant Transamerica Corporation and its [147] corporate subsidiaries, departments and instrumen-

talities, together with other large and substantial sums of money for use as capital for and in behalf of said defendant co-partnership, Walston & Co., and other purposes with respect to which plaintiff is unable to make a more definite or certain statement concerning the precise dates, items and amounts of said payments, but alleges that the same aggregated a total sum of not less than approximately Five Hundred and Forty-eight Thousand Dollars (\$548,000.00), and all of which was so received and accepted by the said defendant co-partnership, Walston & Co., and the individual members thereof, for the private, personal and individual use, benefit, gain and profit of the said defendants and persons herein, and all of which was thereafter, from time to time, by said defendant co-partnership, Walston & Co., and each of its said individual members, knowingly disbursed to and divided between the said defendants and persons, and particularly the defendants Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman and the said Virgil D. Giannini (now deceased), all of whom were thereby, from the funds, monies, assets and property of defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, unjustly enriched to the serious and irremediable injury and detriment of said defendant, Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, in the sum and amount and to the extent of at least approximately Five Hundred and Forty-eight Thousand Dollars (\$548,000.00).

XXXIII.

All of the transactions and acts mentioned and set forth in paragraphs XXX, XXXI and XXXII hereof concerning the formation and organization of the defendant co-partnership, Walston & Co., and the interests of said defendants and persons therein and the acquirement, division and distribution, of the earnings and profits thereof, were at all times, by said defendants and persons herein [148] withheld from the corporate records of the defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, and at all times evidenced by entirely and wholly concealed secret and private agreements and transactions, the precise nature and character of which plaintiff is unable to more definitely set forth.

XXXIV.

During the year 1932, Bankitaly Mortgage Company, a corporation, hereinbefore mentioned, was a corporation organized, acting and existing, under and by virtue of the laws of the State of California, with its principal office and place of business in the City of San Francisco, and there operating and conducting a general mortgage, real estate, investment, and security brokerage business, including speculative operations in the capital stock of defendant Transamerica Corporation, and other stocks and securities, by purchasing and selling the same upon the various national stock exchanges of the United States.

During the year 1932, the precise date of which plaintiff is unable to set forth, the said defendants and persons, by divers means and methods unknown to plaintiff, formed, organized and created a certain private and trust syndicate also having for its purpose speculative operations in the capital stock of said defendant, Transamerica Corporation, and other stocks and securities, by purchasing and selling the same upon the various national stock exchanges of the United States, wherein and whereby one Charles J. Smith, and one, Margaret Mallory, were the trustees thereof, and said defendants and persons were the beneficiaries.

XXXV.

In and during the year 1932, the precise dates of which being to the plaintiff unknown, said defendants and persons herein, by and through their said Boards of Directors of defendant Transamerica Corporation, and without legal right or authority, caused [149] said defendant, Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, to pay and advance from the funds, assets and property thereof, substantial sums of money, the precise amount thereof being to plaintiff unknown, but aggregating a total of not less than approximately One Million, Five Hundred Thousand Dollars (\$1,500,000.00), to the said defendants and persons, and in particular to defendants Amadeo P. Giannini, L. M. Giannini, and the said Virgil D. Giannini (now deceased), which was by them used and disbursed to acquire the controll-

ing interest in the capital stock of said Bankitaly Mortgage Company heretofore mentioned in paragraphs XXXIV and XXXV for the purpose of controlling, maintaining and using said Bankitaly Mortgage Company as an instrument for and to carry out said speculative stock operations and manipulations of said defendants and persons, and also for the purpose of acquiring capital for such speculative stock operations and manipulations, said defendants and persons, by and through their said Boards of Directors of defendant Transamerica Corporation, and without legal right or authority, caused said defendant, Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, to pay and advance from the funds, assets and property thereof, substantial sums of money, the precise amount thereof being to plaintiff unknown, but aggregating a total amount of not less than approximately One Million, Five Hundred Thousand Dollars (\$1,500,000.00) to and into the treasury of said Bankitaly Mortgage Company.

Said payments and advances of the funds, monies, assets and property, of defendant Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, was by said defendants and persons, caused to be made with the intent of said defendants and persons, and each of them, to enhance their respective personal, private and individual interests, and particularly the personal, private and individual, interests of defendants Amadeo P. [150] Giannini and L. M. Giannini, and the said Virgil D. Giannini (now deceased), to the detriment

of defendant Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders.

The precise means and methods used by said defendants and persons herein to accomplish the making of each and all of such payments and advancements of money heretofore mentioned, were and are unknown to the plaintiff, but concerning the same, plaintiff alleges that none of such transactions were open nor in the usual course of business, but on the other hand, were accomplished and consummated secretly and wholly and entirely covered, concealed and camouflaged, by and through purported loans, stock purchases and other transactions with, to, by and through, secret agents, representatives and other corporations and associations, of said defendants and persons, including one, A. O. Stuart and A. P. Giannini Company, a corporation.

XXXVI.

During the year 1932, the precise date thereof being to the plaintiff unknown, said defendants and persons, and each of them, for the purpose and with the intent of further secreting and concealing the nature and extent of their respective interests in, and control of, the said Bankitaly Mortgage Company mentioned in paragraph XXXIV hereof, by and through the Board of Directors thereof, caused its name to be changed and altered to Pacific Coast Mortgage Company mentioned in paragraph II hereof, and thereafter, during the years 1933, 1934, 1935, 1936, 1937 and 1938, by and through said

Pacific Coast Mortgage Company, and by and with the use of said defendants' and persons' positions with said defendant, Transamerica Corporation, and its corporate subsidiaries, departments, and instrumentalities, and the confidential and special knowledge and information gained thereby, operated and engaged in speculative operations and manipulations in the capital stock of defendant [151] Transamerica Corporation, and other stocks and securities, by purchasing and selling the same upon the various national stock exchanges of the United States, and that in and during said period of time, the precise days and dates thereof plaintiff being unable to state, said Pacific Coast Mortgage Company earned and collected a large and substantial profit, the precise amount of which being to plaintiff unknown, but aggregating a total of not less than approximately Two Million Dollars (\$2,000,000.00), which was from time to time, paid to, and received and accepted by, the said defendants and persons, and by reason of which said defendants and persons, were, and each of them was, unjustly enriched, and particularly the defendants, Amadeo P. Giannini and L. M. Giannini, and the said Virgil D. Giannini (now deceased), to the serious and irreparable injury and detriment of defendant Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders, in the sum and amount and to the extent of at least approximately Two Million Dollars (\$2,000,000.00).

XXXVII.

In and during the years of 1933, 1934, 1935 and 1936, the precise dates of which being the plaintiff unknown, said defendants and persons, by and through their said Boards of Directors of said Transamerica Corporation, and without legal right or authority, caused said defendant, Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, from time to time, to pay and advance from the funds, property and assets thereof, substantial sums of money, the precise amounts thereof being to plaintiff unknown, but aggregating a total of not less than approximately Three Million Dollars (\$3,000,000.00), to the said trustees, Charles J. Smith and Margaret Mallory, for use as capital in operating and conducting the business and affairs of said private and secret trust syndicate mentioned in said paragraph XXXIV hereof, and which was thereafter used by said trustees and said beneficiaries [152] thereof for speculative operations in the capital stock of Transamerica Corporation and other stocks and securities upon the various national stock exchanges of the United States in the particulars hereinafter set forth.

With respect to the payment, transfer and advancements of such monies, funds, property and assets of defendant Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, to said trustees and into the treasury of said private and secret trust syndicate as heretofore

set forth, plaintiff alleges that the precise manner and methods used to accomplish the same are unknown to the plaintiff, but that said transactions were not open nor in the usual course of business, but on the other hand, were so accomplished and consummated secretly, and wholly and entirely covered, concealed and camouflaged, by and through purported loans and other transactions and acts with, to, by and through secret agents and representatives of said defendants and persons.

Concerning said payments, advancements and transfers, of the said monies, funds, property and assets, of defendant Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, to the said trustees, Charles J. Smith and Margaret Mallory, plaintiff alleges that said defendants and persons, by and through their said Boards of Directors of said Transamerica Corporation, and without legal right or authority, caused all such payments, transfers and advancements, to be made with the intent of each of them to enhance their respective personal, private and individual interests, to the detriment of the said defendant, Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders.

XXXVIII.

In and during the years 1933, 1934, 1935 and 1936, said defendants and persons, by and through said secret and private [153] trust syndicate, and with and by the use of their official positions with the defendant, Transamerica Corporation, and its

corporate subsidiaries, departments and instrumentalities, and the special and confidential knowledge and information gained thereby, operated and engaged in speculative operations in the capital stock of defendant Transamerica Corporation, and other stock and securities, by purchasing and selling the same upon the various national stock exchanges of the United States, and that in and during said period, the precise days and dates thereof plaintiff being unable to state, the said trust syndicate earned and collected a large and substantial profit, the precise amount of which being to plaintiff unknown, but aggregating a total of not less than approximately Three Hundred Thousand Dollars (\$300,000.00), which was from time to time, paid to, received and accepted by, the said defendants and persons, by reason of which said defendants and persons were, and each of them, was justly enriched to the serious and irremediable injury and detriment of the defendant, Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders, in the sum and amount, and to the extent of at least approximately Three Hundred Thousand Dollars (\$300,000.00).

XXXIX.

In and during the years 1932, 1933, 1934, 1935, 1936 and 1937, the said defendants and persons, in conducting their secret and private manipulations and speculative operations in the purchase and sale of the capital stock of defendant Transamerica Corporation, and other stocks and securities, upon the

various national stock exchanges of the United States, as set forth in paragraphs XXXIV, XXXV, XXXVI, XXXVII, and XXXVIII hereof, by and through their said Boards of Directors of said defendant, Transamerica Corporation, and without legal right or authority, caused said defendant, Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, to engage in the business of manipulating [154] and stirring the market for the capital stock of defendant Transamerica Corporation, and creating a demand therefor, by soliciting orders from the general public of the United States for the purchase of the capital stock of defendant Transamerica Corporation, with respect to which plaintiff further alleges, that said defendant, Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, incurred large items of expense and suffered substantial losses in the operation of such business, the precise items and amounts thereof being unknown to the plaintiff, but aggregating a total sum of not less than approximately Two Million, Two Hundred and Fifty Thousand Dollars (\$2,250,000.00), to the serious and irremediable injury and detriment of said defendant, Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders in the sum and amount of not less than approximately Two Million, Two Hundred and Fifty Thousand Dollars (\$2,250,000.00).

Concerning said expenses and losses incurred in the operation of said business of manipulating and

stirring the market for the capital stock of defendant Transamerica Corporation, plaintiff alleges that said defendants and persons, by and through their said Boards of Directors of said Transamerica Corporation, and without legal right or authority, caused the same to be made and incurred with the intent of each of them, to enhance their respective personal, private and individual interests, to the detriment of said defendant Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders.

XL.

All of the facts, matters, circumstances, things, acts and transactions mentioned and set forth in paragraphs XXXIV, XXXV, XXXVI, XXXVII, XXXVIII and XXXIX hereof, including the interests of said defendants and persons, in and to Bankitaly Mortgage Company, a corporation, Pacific Coast Mortgage Company, a corporation, [155] and the Mallory-Smith trust syndicate, and also including the relationship of said defendants and persons to each thereof and the account of their gains and profits derived therefrom, were, and each was, at all times, by said defendants and persons, withheld from the corporate records and books of account of defendant, Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, and do not appear therein, and the transfer and use of the corporate funds and assets of defendant Transamerica Corporation, its corporate subsidiaries, departments, and instrumen-

talities as in said paragraphs of this complaint set forth, were, and each item thereof was, upon the corporate records of said defendant corporation and its corporate subsidiaries, departments and instrumentalities, disguised and camouflaged, covered and concealed, by false, fictitious and misleading records importing proper use and disposition thereof.

XLI.

During all of the times mentioned herein the said defendants and persons for the purpose and with the intent heretofore alleged kept and continued to keep all of the corporate acts and transactions of the defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, of which complaint is made herein secret and hidden and concealed from plaintiff in the manner set forth in paragraphs XXIX, XXXIII, XXXV, XXXVI, XXXVII and XL hereof, concerning all of which corporate acts and transactions plaintiff was, at, and during all such times wholly ignorant and had no knowledge, notice or information, of any kind or character concerning the same, nor with respect to any irregularity or wrongful conduct of any kind or character of the defendants, or of the other persons mentioned herein, or any or either of them, concerning their management of the assets or their conduct of the business or affairs of defendant Transamerica Corporation, or its corporate subsidiaries, or departments, or in- [156] strumentalities, but on the

other hand, during all of such times, plaintiff had and reposed full and complete confidence in the integrity and good faith of defendant Amadeo P. Giannini and each and all of the directors and officers of defendant Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, in the management, control and operation of the assets, business and affairs thereof, until on or about the 27th day of April, 1939, when, for the first time, a certain quasi judicial proceeding then pending before the Securities and Exchange Commission of the United States at Washington in the District of Columbia entitled "In the Matter of Proceeding Under Section 19 (a) (2) of the Securities Exchange Act of 1934, as amended, to determine whether the registration of Transamerica Corporation capital stock, \$2.00 par value, should be suspended or withdrawn, File No. 1-2964" was called to plaintiff's attention, who thereupon investigated said proceeding and ascertained that on the 22nd day of November, 1938, the said commission had ordered a hearing for the taking of testimony beginning on the 16th day of January, 1939, for the purpose of determining whether or not the capital stock of the defendant Transamerica Corporation should be suspended or withdrawn from certain national securities exchanges, namely, the New York Stock Exchange, the Los Angeles Stock Exchange, and the San Francisco Stock Exchange, by reason of certain false and misleading statements of material facts, including financial statements of said Transamerica Corporation and its corporate

subsidiaries, departments and instrumentalities, which did not correctly reflect the true financial condition thereof and which the Commission had reasonable ground to believe had been made in said defendant Transamerica Corporation's application for registration of its said capital stock upon said stock exchanges. Plaintiff also then and there, and for the first time, ascertained the matters, facts, things, circumstances and charges contained in said order for hear- [157] ing which had been released under date of November 25, 1938, a printed official copy of which order is hereby tendered for filing in this Court for the purpose of showing the nature and extent of plaintiff's first discovery of suspicious circumstances concerning the wrongs of which complaint is made herein.

With respect to said quasi judicial proceeding and the contents of said order for hearing, plaintiff alleges that prior to the 27th day of April, 1939, she had no notice, knowledge or information of any kind or character whatsoever concerning the same, nor did she have any reason to suspect the existence of the matters, facts, things, charges and circumstances therein related, nor did she have any reason to suspect the said defendants and persons mentioned herein, or any or either of them of wrongdoing concerning the conduct of the business and affairs of the defendant Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, and further concerning said order for hearing plaintiff further alleges that the matters, facts, charges, circumstances and other matters

therein related were developed slowly by and through certain detailed examinations and audits of the corporate records and books of account of the defendant Transamerica Corporation, and its corporate subsidiaries, departments and instrumentalities, by expert accountants for and in behalf of said Commission, and were presented to said Commission by the testimony of unwilling and hostile witnesses through the examination of such witnesses by experienced lawyers; and also concerning such quasi judicial proceedings plaintiff further alleges that the said issues and questions therein are still being investigated, and that said proceeding is still pending and undetermined.

After first making the discovery hereinabove set forth plaintiff, having no personal knowledge of the matters, facts, charges and circumstances related in said order for hearing and [158] desiring to determine if actionable wrongs had in fact been committed by said defendants and persons against the said defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, and shareholders, immediately proceeded to investigate and has at all times ever since diligently continued an investigation to ascertain the true and complete facts with respect to the conduct of said defendants and persons in the management and operation of the business and affairs of defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, but thus far has been unable to fully complete such investigation, and is still proceeding therewith.

XLII.

All of the individual members of the several Boards of Directors of the defendant Transamerica Corporation, during all of the times mentioned herein, and up to and including the time of the commencement of this action, are named and sued as defendants herein or are otherwise named and charged with the commission of the wrongs set forth herein, and having at all such times the complete and exclusive control of the voting shares of the capital stock of said defendant, Transamerica Corporation, and having at all such times exercised such control, the plaintiff with knowledge of such facts has made no demand of the Board of Directors of said defendant Transamerica Corporation nor of its shareholders to institute an action to redress the wrongs for which relief is sought herein as such a suit to be effective and complete must be directed against all of said defendants and persons named herein and that such a demand by plaintiff upon the Board of Directors would be and constitute a futile and idle act.

XLIII.

At all times mentioned herein and up to the time of the commencement of this action, the said defendants and persons herein named, have had and exercised complete and exclusive control of the [159] voting shares of stock of defendant Transamerica Corporation as hereinbefore alleged, and that the total issued and outstanding shares of stock of said defendant Transamerica Corporation,

are owned and held by approximately two hundred thousand (200,000) individuals and persons residing and scattered in substantially all the states and territories of the United States and numerous foreign countries, including, Alaska, Australia, Azores, Belgium, Brazil, Canada, China, Czecho-Slovakia, Denmark, Dutch East Indies, East Indies, England, France, Greece, Germany, Hawaii, Holland, India, Ireland, Italy, Japan, Mexico, New Zealand, Panama Canal Zone, Palestine, Philippine Islands, Peru, Poland, Porto Rico, Portugal, Roumania, Samoan Islands, Scotland, South Africa, Sweden, Switzerland, Spain, and West Indies, and concerning all of which plaintiff alleges that she has made no demand upon the shareholders as a body to cause action to be taken to remedy the wrongs herein complained of or to prevent the continued perpetration of such wrongs, as such a demand to be effective, would first require an expensive and prolonged struggle with said adverse Boards of Directors and persons to wrest control of all the voting shares of stock of defendant Transamerica Corporation from them, which struggle would also be a futile and idle act.

XLIV.

Plaintiff has no plain, speedy or adequate remedy at law.

Wherefore, plaintiff prays for judgment and decree against the defendants, and each of them as follows:

(a) That a trust relationship between plaintiff and each of said defendants, and a trust relation-

ship between defendant Transamerica Corporation and said defendants be declared;

(b) That defendants, and each of them, render a complete true and correct, accounting of all their dealings and transactions with the assets, business and affairs, of defendant Transamerica [160] Corporation, and all of their corporate acts and conduct as members of the Board of Directors and officers thereof concerning all of the transactions for which relief is sought herein;

(c) That upon such complete, true and correct accounting the court make and enter judgment and decree for plaintiff against said defendants, and each of them, in sums and amounts to which plaintiff and the defendant Transamerica Corporation may be entitled under the law and evidence, amounting in all to a sum not less than Eight Million, Seven Hundred and Ninety-eight Thousand Dollars (\$8,798,000.00), with proper legal interest thereon;

(d) For costs and expenses incurred by the plaintiff in the prosecution of this action, and an allowance of a reasonable sum to be awarded to plaintiff's counsel as a fee for their services herein:

(e) And for such other and further equitable relief to which the plaintiff may be entitled under the pleadings and evidence herein.

VINCENT ANTHONY MARCO
HOMER N. BOARDMAN
PERCY V. CLIBBORN

Attorneys for Plaintiff [161]

State of New York

County of Bronx—ss.

Rose Papantonio, being duly sworn, deposes and says she is the plaintiff in the within action; that she has read the foregoing second amended complaint and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters she believes it to be true.

ROSE PAPANTONIO

Sworn to before me this 17th day of August, 1942.

[Seal] SALVATORE MILANO

Notary Public, Bronx County, Bronx County

Clerk's No. 70, Reg. No. 185M44.

Commission expires March 30, 1944.

Form No. 1

No. 34661

State of New York,

County of Bronx—ss.

I, Michael B. McHugh, Clerk of the County of Bronx (and Clerk of the Supreme Court of said County, and Clerk of the County Court for said County, the same being Courts of Record, having by law a seal), do hereby certify that Salvatore Milano whose name is subscribed to the certificate of acknowledgment, proof, affidavit or deposition of the annexed instrument and thereon written, was on the day of the date thereof a Notary Public within and for, and residing in said County, duly commissioned, qualified and sworn, having full

power and authority by the laws of said State to take the acknowledgments of deeds or conveyances for lands, tenements and hereditaments in said State, and certify to same; also to administer oaths, to take depositions out of court, and to give certificates thereof; that full faith and credit may, and ought to be given to his official acts and attestations; that I have compared the signature on file in this office and verily believe that the signature of said certificate of acknowledgment, proof, affidavit or deposition, is his genuine official signature as appears by the records of this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, this 17 day of Aug., 1942.

[Seal]

MICHAEL B. McHUGH

Clerk [162]

Affidavit of Service by Mail

State of California

County of Los Angeles—ss.

Percy V. Clibborn, being sworn, says: That affiant is a citizen of the United States, over 18 years of age, a resident of the County of Los Angeles, State of California, and is not a party to the action, the title of which appears on the document to which this affidavit is attached.

That affiant is one of the attorneys for the plaintiff in said action, and that his place of business is 432 Rowan Building, 458 South Spring Street, in the City of Los Angeles, State of California; that affiant served a full, true and correct copy of the attached foregoing Second Amended Complaint en-

titled "Plaintiff's Second Amended Complaint" by placing said copy in an envelope addressed to Messrs. Keyes & Erskine, Herbert W. Erskine and Louis Ferrari, Attorneys at Law, at 625 Market Street, San Francisco, California; and that affiant also served a full, true and correct copy of said second amended complaint by placing said copy in an envelope addressed to Messrs. Bacigalupi, Elkus & Salinger, and Claude M. Rosenberg, Attorneys at Law, at 300 Montgomery Street, San Francisco, California, all of which said two envelopes were then sealed and postage fully prepaid thereon, and thereafter were on Friday, August 21, 1942, deposited by affiant in the United States Post Office at Los Angeles, California; and that there is delivery service by United States mail at each of the places so addressed, and that there is regular communication by mail between the place of mailing and each of the places so addressed.

PERCY V. CLIBBORN

Subscribed and sworn to before me this 21st day of August, 1942.

[Seal] EVELYN N. HOLLAND

Notary Public in and for said County and State.

My Commission Expires February 7, 1944.

[Endorsed]: Filed Aug. 21, 1942. [163]

[Title of District Court and Cause.]

MOTIONS BY DEFENDANT AMADEO P. GIANNINI, INDIVIDUALLY AND AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF VIRGIL D. GIANNINI, DECEASED.

- (1) TO DISMISS THE ACTION;
- (2) FOR AN ORDER REQUIRING PLAINTIFF TO SEPARATELY STATE CAUSES OF ACTION IN SEPARATE COUNTS;
- (3) FOR A MORE DEFINITE STATEMENT OR FOR BILL OF PARTICULARS, AND
- (4) TO STRIKE OUT THE ENTIRE SECOND AMENDED COMPLAINT.

Defendant Amadeo P. Giannini, individually, defendant Amadeo P. Giannini, as an alleged co-partner of defendant Walston & Co., defendant Amadeo P. Giannini, as Executor of the Last Will and Testament of Virgil D. Giannini, Deceased, and defendant Amadeo P. Giannini, as Executor of the Last Will and Testament of Virgil D. [164] Giannini, a deceased alleged member of said co-partnership, moves the court, severally and in each of the various capacities in which he is sued as follows:

MOTION TO DISMISS

I. To dismiss the action:

(a) Because the Second Amended Complaint fails to state a claim against defendant upon which relief can be granted;

(b) Because the alleged claim set forth in said Second Amended Complaint against defendant is barred by the provisions of Section 338, subdivision 4, and Section 339, subdivision 1, of the Code of Civil Procedure of the State of California;

(c) Because the alleged claim set forth in said Second Amended Complaint is barred by the laches of plaintiff in failing to use diligence in the prosecution of said claim and by the long delay in making defendant, as Executor, a party to this action, which lack of diligence and delay have been highly prejudicial to said defendant;

(d) Because there is a failure to include indispensable parties defendant as parties to the action, to wit, the subsidiaries of defendant Transamerica Corporation which are alleged to have suffered injury and detriment by the acts complained of;

(e) Because the court lacks jurisdiction and the Second Amended Complaint fails to state a claim against defendant upon which relief can be granted, for the reason that the Second Amended Complaint sets forth certain injury and damage to the subsidiaries of Transamerica Corporation and fails to allege that plaintiff was a stockholder of such subsidiaries, or any of them;

(f) Because the complaint consists entirely of sham, irrelevant, redundant and evasive allegations, and is not in compliance with the directions of the above court in granting to plaintiff permission to file a Second Amended Complaint, and fails to set [165] forth the undisputed facts that on December 9, 1931, the stockholders of Transamerica Corpora-

tion, including plaintiff, were sent a letter advising them that A. P. Giannini had received for his compensation the credits referred to in the Second Amended Complaint, and had withdrawn all but \$792,000.00 thereof, and that the Board of Directors of Transamerica upon advice of counsel had refused to pay defendant A. P. Giannini said balance; and that plaintiff had notice that thereafter, in February, 1932, A. P. Giannini was re-elected a director and officer of said corporation; and

(g) Because plaintiff has entirely disregarded the directions of this court at the time of the hearing of the motions herein directed at the First Amended Complaint with regard to setting up her causes of action in separate counts.

MOTION FOR AN ORDER REQUIRING PLAINTIFF TO SEPARATELY STATE CAUSES OF ACTION IN SEPARATE COUNTS

II. For an order requiring plaintiff to state in separate counts the claims founded upon the following separate transactions:

First, the transaction, the gist of which appears in paragraphs XXVI to XXIX, inclusive, and in which, it is alleged, defendants Amadeo P. Giannini and L. M. Giannini, and Virgil D. Giannini, deceased, were unjustly enriched to the serious and irremediable injury of defendant Transamerica and its corporate subsidiaries, departments, instrumentalities and shareholders, to the extent of at least \$3,700,000.00, alleged to have been paid to said

defendants on account of a salary agreement made between one Bancitaly Corporation and defendant Amadeo P. Giannini between April, 1929, and January, 1939.

Second, the transaction, the gist of which appears in paragraphs XXX to XXXIII, inclusive, and in which, it is alleged, defendant Walston & Co. and its individual members were unjustly [166] enriched in the years 1933 to 1938, inclusive, from the funds, moneys, assets and properties of defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, to the serious injury and detriment of Transamerica, its subsidiaries, departments and instrumentalities and shareholders in the sum and amount and to the extent of at least approximately \$548,000.00.

Third, the transaction, the gist of which appears in paragraphs XXXIV to XXXVI, inclusive, in respect to which it is alleged that during the year 1932 the sum of approximately \$1,500,000.00 was advanced by Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, for the purpose of the acquisition of Bankitaly Mortgage Company, and to said Bankitaly Mortgage Company the further sum of \$1,500,000.00 for use as capital, and that said Bankitaly Mortgage Company, later Pacific Coast Mortgage Company, indulged in certain speculative transactions which resulted in a profit of \$2,000,000.00 in the years 1933 to 1938, inclusive, by reason of which defendants were unjustly enriched to the serious and irremediable injury and detriment of defendant Transamerica Corporation, its corporate subsidi-

aries, departments, instrumentalities and shareholders in the amount of \$2,000,000.00.

Fourth, the transaction, the gist of which appears in paragraphs XXXVII and XXXVIII, in which it is alleged that Transamerica, its corporate subsidiaries, departments and instrumentalities, advanced to Charles J. Smith and Margaret Mallory, trustees, the sum of \$3,000,000.00 for speculative operations in the capital stock of Transamerica Corporation and in other stocks and securities, which transactions resulted in the years 1933 to 1936, inclusive, in a profit to said trust of \$300,000.00, and that defendants were unjustly enriched to the serious and irremediable injury and detriment of defendant Transamerica Corporation and its corporate subsidiaries, departments, instrumentalities and shareholders in the [167] amount of \$300,000.00.

Fifth, the transaction, the gist of which appears in paragraph XXXIX, in which it is alleged that in the years 1932 to 1937, inclusive, defendants caused Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, to incur items of expense aggregating \$2,250,000.00 and suffer losses in "stirring" and manipulating the market for stock of Transamerica Corporation, to the serious and irremediable injury and detriment of defendant Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders, in the amount of \$2,250,000.00.

This motion is made without prejudice to the motion heretofore made to dismiss the action, based

upon the same ground, and the motion hereinafter made to strike the complaint from the files on the same ground.

This motion is made upon the ground that the Second Amended Complaint unites and does not state in separate counts the several alleged claims founded upon separate alleged transactions or occurrences, in violation of the provisions of paragraph (b) of Rule 10 of the Federal Rules of Civil Procedure, and in violation of the directions of this court, given at the time permission was granted to the plaintiff to file an amended bill; that the defendants involved in the first alleged transaction are not the same as the defendants involved in the second, third, fourth or fifth transaction; that the defendants involved in the second, third, fourth and fifth transactions are different; that the plaintiff's alleged right to recover in behalf of Transamerica Corporation is based upon separate and distinct theories respecting each of said five alleged transactions; that plaintiff's alleged right to recover in behalf of Transamerica is based upon separate and distinct allegations with reference to each of said five alleged transactions; that said five alleged transactions are alleged to have occurred during different [168] times, and the officers and directors of Transamerica Corporation during the time of said alleged respective transactions were different; that a statement in separate counts of said five transactions will facilitate the clear presentation of the special defenses thereto of moving defendant, and that said separate statement is necessary in order

to permit defendant to assert his defense to said action.

MOTION FOR A MORE DEFINITE STATEMENT OR FOR A BILL OF PARTICULARS

III. For an order requiring plaintiff to make a more definite statement of or a bill of particulars in respect to the following matters, as to each of which defendant desires more definite particulars and in respect to each of which the Second Amended Complaint is defective:

A—Defects In Allegations Relating To Transamerica's Subsidiaries

A1. What facts constitute the basis of plaintiff's conclusion appearing in paragraph II of the Second Amended Complaint, that Bank of America National Trust & Savings Association, a national banking association, and the other corporations thereafter named are or were departments and instrumentalities of defendant Transamerica Corporation (p. 3, line 6 to p. 4, line 2).

A2. During what periods of time was the capital stock of the corporations referred to in said paragraph II as "subsidiaries, departments and instrumentalities" of defendant Transamerica Corporation, owned by defendant Transamerica Corporation, and what proportion of the stock of each was so owned by Transamerica Corporation.

A3. Which of the corporations referred to in paragraph XXVI and elsewhere in said Second Amended Complaint as "said corporation and its

corporate subsidiaries, departments and instrumen-
[169] talities” or by language of similar import
(hereinafter in this motion referred to as “said
corporations”), and if more than one to what ex-
tent each, was caused to acquire and absorb all of
the capital stock of Bancitaly Corporation, as al-
leged in paragraph XXVI of said Second Amended
Complaint (p. 17, line 26 to p. 18, line 1).

A4. How and by what means and in what man-
ner was said transaction accomplished, and who
were the “other persons” mentioned in said para-
graph XXVI from whom such stock was acquired
(p. 17, line 33).

A5. Which of said corporations, and if more
than one to what extent each, was caused to acquire
and absorb all of the assets of Bancitaly Corpora-
tion, as alleged in said paragraph XXVI (p. 17,
line 26 to p. 18, line 1).

A6. How and by what means and in what man-
ner was said transaction accomplished.

A7. Which of said corporations, and if more
than one to what extent each, was caused to appear
to assume as its own obligations the alleged pre-
tended, fraudulent and fictitious liabilities of said
Bancitaly Corporation, as alleged in said paragraph
XXVI (p. 17, line 26 to p. 18, line 17).

A8. Which of said corporations, and if more
than one to what extent each, was caused to make
and enter certain purported false, fraudulent and
fictitious credit entries, and upon the books of which
of said corporations were said entries made, as al-
leged in paragraph XXVII (p. 19, line 19 to p. 20,
line 6).

A9. Which of said corporations, and if more than one to what extent each, was caused to pay to defendants Amadeo P. Giannini and L. M. Giannini, and Virgil D. Giannini, now deceased, sums as alleged in paragraph XXVIII of said Second Amended Complaint (p. 20, line 30 to p. 21, line 29).

A10. From the funds and assets of which of said [170] corporations, and if more than one the extent as to each, were defendants Amadeo P. Giannini and L. M. Giannini, and Virgil D. Giannini, now deceased, unjustly enriched, and which of said corporations, and if more than one to what extent each, thereby suffered serious and irremediable injury and detriment, as alleged in paragraph XXVIII (p. 21, line 30 to p. 22, line 15).

A11. Upon the books of which of said corporations, and if more than one to what extent each, were the transactions complained of in paragraphs XXVI, XXVII and XXVIII concealed, as alleged in paragraph XXIX of said Second Amended Complaint (par. XXIX, p. 22, line 17 to p. 23, line 8).

A12. Which of said corporations, and if more than one to what extent each, was actively engaged in a profitable brokerage business when defendant Walston & Co. was formed, as alleged in paragraph XXX of said Second Amended Complaint (p. 23, lines 10-29).

A13. Which of said corporations' brokerage business, and if more than one to what extent the brokerage business of each, was diverted to Walston & Co., as alleged in paragraph XXXI of said Second Amended Complaint (p. 23, line 31 to p. 24, line 19).

A14. Which of said corporations, and if more than one to what extent each, was caused from time to time to disburse its funds and assets to Walston & Co., as alleged in paragraph XXXII of said Second Amended Complaint (p. 24, line 21 to p. 25, line 25).

A15. To which of said corporations did the business alleged to have been diverted to Walston & Co. belong, and if more than one the extent as to each, as alleged in paragraph XXXII (p. 24, line 21 to p. 25, line 25).

A16. From the funds, money, assets and properties of which of said corporations, and if more than one the extent as to each, were defendants unjustly enriched, as alleged in said paragraph XXXII (p. 24, line 21 to p. 25, line 25).

A17. Which of said corporations, and if more than one [171] to what extent each, was caused to pay and advance the sum of \$1,500,000.00 to the defendants to acquire a controlling interest in Bankitaly Mortgage Company, as alleged in paragraph XXXV of said Second Amended Complaint (p. 26, line 29 to p. 27, line 25).

A18. Which of said corporations, and if more than one to what extent each, was caused to pay and advance the sum of \$1,500,000.00 to Bankitaly Mortgage Company for speculative purposes, as alleged in said paragraph XXV (p. 26, line 29 to p. 27, line 25).

A19. To the extent that the same is not disclosed by the allegations of paragraphs XXII and XXIII of said Second Amended Complaint, what position did each defendant and each of the persons

referred to in paragraph XXXVI hold in said corporations, and if in more than one the positions in each (p. 28, lines 28-31).

A20. Which of said corporations, and if more than one to what extent each, suffered the serious and irremediable injury and detriment alleged in paragraph XXXVI (p. 29, lines 13-17).

A21. Which of said corporations, and if more than one to what extent each, was caused from time to time to pay and advance the sum of \$3,000,000.00 to the trustees mentioned in paragraph XXXVII of the Second Amended Complaint, as alleged in said paragraph (p. 29, line 19 to p. 30, line 4).

A22. To the extent that the same is not disclosed by the allegations of paragraphs XXII and XXIII of said Second Amended Complaint, what official positions did the defendants and persons referred to in paragraph XXXVIII of said Second Amended Complaint hold in said corporations, and if in more than one, the positions in each (p. 30, line 31 to p. 31, line 4).

A23. Which of said corporations, and if more than one to what extent each, suffered the serious and irremediable injury and detriment alleged in said paragraph XXXVIII (p. 31, lines 16-20).

A24. Which of said corporations, and if more than one [172] to what extent each, was caused to engage in the business of manipulating and "stirring" the market for capital stock of defendant Transamerica Corporation and doing the other acts complained of in paragraph XXXIX of said Second Amended Complaint, as alleged in said paragraph (p. 31, line 22 to p. 32, line 16).

A25. Which of said corporations, and if more than one to what extent each, suffered serious and irremediable injury and detriment by the expenditure of the sum of \$2,250,000.00, as alleged in paragraph XXXIX (p. 32, lines 12-16).

A26. Which of the items referred to in paragraph XL of said Second Amended Complaint were disguised, camouflaged, covered and concealed by entries on the books of which said corporations, and if more than one the extent as to each (p. 33, lines 11-15).

A27. Has plaintiff at any time been the owner of shares of stock of any of the corporations alleged in paragraph II of the Second Amended Complaint to be subsidiaries of defendant Transamerica Corporation and, if so, for what period did plaintiff own stock in each of said subsidiaries, and what was the number of shares of stock owned by plaintiff in each.

A28. To the extent that the same is not disclosed in paragraphs II, XXXIV and XXXVI, of what state is each of said corporations a resident.

B—Defects in allegations constituting the gist of the claims and consisting of conclusions of law or of the pleader.

B1. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXVI, that the matters complained of in said paragraph were "without legal right or authority" (p. 17, lines 28-29).

B2. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVI,

that the salary agreement therein referred to was "pretended, fraudulent and fictitious" [173] (p. 18, line 4).

B3. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVI, that the credit entries therein referred to were "pretended, fraudulent and fictitious" (P. 18, lines 11-12).

B4. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVI, that the profits of Bancitaly Corporation used as a basis of computation "were false, fictitious, unearned and unrealized" (p. 19, lines 9-13).

B5. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXVII, that the acts therein complained of were "without legal right or authority" (p. 19, lines 26-27).

B6. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVII, that the credit entries therein referred to were "purported, false, fraudulent and fictitious" (p. 19, line 29).

B7. What facts constitute the basis of plaintiff's conclusions appearing in said paragraph XXVII, that the total credit and each item thereof "was and is false, fraudulent, fictitious and untrue" and computed upon "false, fictitious, unearned and unrealized profits (p. 20, lines 13-19).

B8. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVIII, that defendants Amadeo P. Giannini and L. M. Giannini, and Virgil D. Giannini, now

deceased, were “unjustly enriched” by the payments in said paragraph referred to (p. 22, line 2).

B9. What facts constitute the basis of plaintiff’s conclusion appearing in said paragraph XXVIII, that the alleged unjust enrichment was “to the serious and irremediable injury and detriment of said defendant corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders” (p. 22, [174] lines 2-5).

B10. What facts constitute the basis of plaintiff’s conclusion appearing in paragraph XXIX, that the corporate transactions and acts therein referred to were “wholly and entirely concealed” (p. 23, line 8).

B11. What facts constitute the basis of plaintiff’s conclusion appearing in paragraph XXXI, that the matters therein complained of were “without legal right or authority” (p. 24, line 4).

B12. What facts constitute the basis of plaintiff’s conclusion appearing in paragraph XXXII, that the matters therein complained of were done “without legal right or authority” (p. 24, lines 23-24).

B13. What facts constitute the basis of plaintiff’s conclusion appearing in said paragraph XXXII, that the defendants therein referred to were “unjustly enriched” (p. 25, line 20).

B14. What facts constitute the basis of plaintiff’s conclusion appearing in said paragraph XXXII, that said alleged unjust enrichment was “to the serious and irremediable injury and detriment of said defendant, Transamerica Corporation,

its corporate subsidiaries, departments and instrumentalities'' (p. 25, lines 20-23).

B15. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXV, that the transaction therein complained of was "without legal right or authority" (p. 27, line 18).

B16. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXV, that the loans and advances therein referred to were not "open nor in the usual course of business" (p. 28, lines 9-10).

B17. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXVI, that the defendants therein mentioned and each of them was "unjustly enriched" (p. 29, line 11).

B18. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXVI, that said alleged [175] unjust enrichment was "to the serious and irremediable injury and detriment of defendant Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders" (p. 29, lines 13-16).

B19. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXVII, that the matter therein complained of was "without legal right or authority" (p. 29, line 22).

B20. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXVII, that the loans and advances therein referred to were not "open nor in the usual course of business" (p. 30, line 12).

B21. What facts constitute the basis of plain-

tiff's conclusion appearing in paragraph XXXVIII, that the defendants therein referred to were and each of them was "unjustly enriched" (p. 31, line 16).

B22. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXVIII, that said alleged unjust enrichment was "to the serious and irremediable injury and detriment of the defendant, Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders" (p. 31, lines 16-19).

B23. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXIX, that the matters in said paragraph complained of were done "without legal right or authority" (p. 31, line 30).

B24. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXIX, that the said matters were "to the serious and irremediable injury and detriment of said defendant, Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders" (p. 32, lines 12-14). [176]

C. Defects in hypothetical and alternative allegations.

C1. Whether all the directors named as defendants and John M. Grant conspired and confederated, as alleged in paragraph XIX (p. 7, lines 14-22), or whether some of them were not conspirators but mere puppets, as alleged in paragraph XXIV (p. 16, line 32 to p. 17, line 4), or were neither conspirators nor puppets but merely failed

to discover the alleged wrongs, or having discovered the alleged wrongs failed to take action, as alleged in paragraph XXV (p. 17, lines 15-24).

C2. Which of the defendants and persons mentioned in said Second Amended Complaint were conspirators, which were puppets but not conspirators, which were neither conspirators nor uppets but failed to discover the alleged wrongful acts complained of, and which, being neither conspirators nor puppets, having discovered the alleged wrongful acts failed to take action, as alleged in paragraphs XIX, XXIV and XXV of the Second Amended Complaint.

D. Defects in allegations designed to excuse plaintiff's failure to make demand upon the Board of Directors of Transamerica to bring this action and to appeal to the stockholders of Transamerica.

D1. Upon what facts does plaintiff base her conclusion that an action to redress the alleged wrongs for which relief is sought in this action to be effective and complete must be directed against all of said defendants and persons named in the Second Amended Complaint, as alleged in paragraph LXII thereof (p. 36, lines 24-26).

D2. What facts constitute the basis of plaintiff's conclusion that a demand upon the Board of Directors of defendant Transamerica Corporation to bring this action would be and constitute a futile and idle act, as alleged in paragraph XLII of said Second [177] Amended Complaint (p. 36, lines 27-28).

D3. How and by what methods and by what means have the defendants and persons referred to in paragraphs XXI and XLIII of said Second Amended Complaint had and exercised complete and exclusive control of the voting shares of stock of defendant Transamerica Corporation, as alleged in said paragraphs of said Second Amended Complaint (p. 12, lines 14-25, and p. 36, line 30 to p. 37, line 2, respectively); if by stock ownership, how many shares did they hold, what was the period of time during which shares were held, and whether such control included the 57 shares alleged to be owned by plaintiff, and if through proxies, the period during which said proxies were held and by whom.

D4. Upon what facts does plaintiff base her conclusion that any demand upon the stockholders to be effective would first require an expensive and prolonged struggle with said adverse Boards of Directors and persons to wrest control of all the voting shares of stock of defendant Transamerica Corporation from them, as alleged in paragraph XLIII (p. 37, lines 17-20).

D5. Upon what facts does plaintiff base her conclusion that such a struggle would also be a futile and idle act, as alleged in paragraph XLIII (p. 37, lines 20-21).

E. Defects in allegations designed to avoid the bar of the statute of limitations.

E1. Who called plaintiff's attention on April 27, 1939, to the proceeding pending before the Securities and Exchange Commission and the order

of said Commission made therein on November 22, 1938, and released on November 25, 1938, as alleged in paragraph XLI of said Second Amended Complaint (p. 34, line 7 to p. 35, line 5); what was the relationship of said informant to plaintiff, and how long had such informant held such relationship to plaintiff.

E2. Why was plaintiff's attention not called to said order of November 22, 1938, earlier than April 27, 1939. [178]

E3. Why did plaintiff not learn of said order on November 25, 1938, when the same was released.

F. Defects in other allegations.

F1. What was the total amount of issued and outstanding shares of capital stock of Transamerica on the date of the commencement of this action as contrasted with the 57 shares owned by plaintiff, as set forth in paragraph III of the Second Amended Complaint (p. 4, lines 4-9).

F2. What were the pretended, fraudulent and fictitious liabilities of Bancitaly Corporation (other than the salary agreement) mentioned and referred to in paragraph XXVI of the Second Amended Complaint (p. 18, lines 1-3).

F3. Whether at the time defendants and persons mentioned in said paragraph XXVI caused Transamerica, its subsidiaries, departments and instrumentalities, to appear to assume as its own certain alleged pretended, fraudulent and fictitious liabilities of Bancitaly Corporation, including a certain alleged pretended, fraudulent and fictitious salary agreement, any of said defendants and per-

sons knew that said salary agreement was pretended or fraudulent or fictitious and, if so, which of said defendants and persons had such knowledge.

F4. To what extent were the credit entries referred to in paragraph XXVII (p. 20, lines 7-28) of said Second Amended Complaint in excess of the actual and true net profits of Bancitaly Corporation or Transamerica Corporation.

F5. Wherein did the amount credited to Amadeo P. Giannini, L. M. Giannini and Virgil Giannini, not truly and correctly represent five per cent of the actual and true net profits of said corporation and its corporate subsidiaries for said period, as alleged in paragraph XXVII (p. 20, lines 7-17) of said Second Amended Complaint, and wherein was the said salary computed upon false, fictitious, unearned and unrealized profits, and to what [179] extent was it so computed, as alleged in paragraph XXVII (p. 20, lines 17-20).

F6. To what extent, if any, did the amount of \$3,700,000.00 alleged to have been paid to defendant A. P. Giannini and others, alleged in paragraph XXVIII (p. 20, line 30 to p. 21, line 19), exceed 5% of the actual and true net profits of Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, as alleged in paragraph XXVII (p. 20, lines 7-28).

F7. Wherein the records and books of account kept and maintained by Transamerica Corporation were manipulated by an involved, intricate and complex system of accounting, as alleged in paragraph XXIX (p. 22, lines 24-27) of said Second Amended Complaint, and how the said sys-

tem of accounting was in conflict with the usual, customary, and proper and recognized principles of the science of accounting, and what were the false, misleading, untrue and fictitious names and designations under which payments and disbursements to defendant Amadeo P. Giannini, as alleged in said paragraph XXIX (p. 23, lines 3-8) were covered, disguised and concealed; and what was the knowledge and understanding of the plaintiff with respect to accounting.

F8. How and in what manner was the transfer and use of corporate funds and assets of defendant Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, disguised, camouflaged, covered and concealed on the books of Transamerica Corporation, its subsidiaries, departments and instrumentalities, and wherein were the records false, fictitious or misleading, as alleged in paragraph XL of said Second Amended Complaint (p. 33, lines 8-15).

The foregoing motion will be made upon the ground that the Second Amended Complaint lacks definiteness in the particulars specified and is defective in that regard, and that the details desired by defendant are necessary to enable him properly to prepare his responsive pleadings and to prepare for trial. [180]

MOTION TO STRIKE OUT THE ENTIRE SECOND AMENDED COMPLAINT

IV. For an order striking the entire Second Amended Complaint from the files for all of the rea-

sons set forth in subdivisions (f) and (g) of the foregoing Motion to Dismiss.

COSGROVE & O'NEIL

T. B. COSGROVE

F. J. O'NEIL

JOHN N. CRAMER

By JOHN N. CRAMER

Attorneys for Defendant Amadeo P. Giannini, Individually and in All of the Capacities in Which he is Sued

The address of said Attorneys for Amadeo P. Giannini is:

1031 Rowan Building

458 South Spring Street

Los Angeles, California

NOTICE OF MOTION

To Vincent A. Marco, Esq., Percy V. Clibborn, Esq., Homer N. Boardman, Esq., and Joseph A. Ruskay, Esq., Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motions on for hearing before this court (Honorable Harry A. Hollzer, District Judge), at court room No. 2, Post Office and Federal Courts Building, City of Los Angeles, California, on the 1st day of October, 1942, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

You Will Further Take Notice that all of said motions will be made upon the files and records herein, including the Reporter's Transcript of the

proceedings herein had on June 23, 24 and 25, 1942, said motions and this notice, and the affidavits relating respectively (1) to the delivery to counsel for plaintiff herein of [181] a copy of the letter of December 9, 1931, more particularly described in paragraph (f) of the foregoing Motion to Dismiss, and (2) to the mailing of said letter in December, 1931, which affidavits are annexed to the motions herein of defendants A. H. Giannini, et al., made in respect to the Second Amended Complaint.

Please Take Further Notice that defendant Amadeo P. Giannini will rely upon Points and Authorities in support of said motions, a copy of which is herewith served upon you.

COSGROVE & O'NEIL

T. B. COSGROVE

F. J. O'NEIL

JOHN N. CRAMER

By JOHN N. CRAMER

Attorneys for Defendant Amadeo P. Gannini, Individually and in All of the Capacities in Which he is Sued [182]

State of California,
County of Los Angeles—ss.

Ershal Murphy, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of 18 years and is not a party to the within and above entitled action; that affiant's business address is 1031 Rowan Building, 458 South Spring Street, Los Angeles, California;

that on the 15th day of September, A. D. 1942, affiant served the within "Motions by Defendant Amadeo P. Giannini, Individually and as Executor of the Last Will and Testament of Virgil D. Giannini, Deceased, (1) To Dismiss the Action; (2) For an Order Requiring Plaintiff To Separately State Causes of Action in Separate Counts; (3) For a More Definite Statement or For Bill of Particulars, and (4) To Strike Out the Entire Second Amended Complaint" and "Notice of Motion" on the attorneys for plaintiff in said action by placing a true copy thereof in an envelope addressed to said attorneys at the business address of said attorneys as follows: Vincent A. Marco, Esq., Percy V. Clibborn, Esq., Homer N. Boardman, Esq., Joseph A. Ruskay, Esq., 9730 Wilshire Boulevard, Beverly Hills, California, and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office as Los Angeles, California; that there is delivery service by United States mail at the place so addressed and there is regular communication by mail between the place of mailing and the place so addressed.

ERSHAL MURPHY

Subscribed and sworn to before me this 15th day of September, 1942.

[Notarial Seal] MARY IVES ANDERSON
Notary Public in and for said County of Los Angeles, State of California [183]

Receipt of a copy of the within is hereby admitted this . . . day of September, 1942.

VINCENT A. MARCO,
PERCY V. CLIBBORN,
HOMER N. BOARDMAN,
JOSEPH A. RUSKAY,

By
Attorneys for Plaintiff

[Endorsed]: Filed Sept. 15, 1942. [183-A]

[Title of District Court and Cause.]

MOTIONS BY DEFENDANTS L. M. GIANNINI, INDIVIDUALLY AND AS AN ALLEGED PARTNER OF WALSTON & CO., GORDON GRAY, O. D. HAMLIN, T. W. HARRIS, A. P. JACOBS, F. G. STEVENOT, RUSS AVERY, P. A. BRICCA, GEORGE J. De MARTINI, W. N. LAGOMARSINO, A. J. SCAMPINI, CHESTER H. LOVELAND, AND THEODORE M. STUART,

- (1) TO DISMISS THE ACTION;
- (2) FOR AN ORDER REQUIRING PLAINTIFF SEPARATELY TO STATE CAUSES OF ACTION IN SEPARATE COUNTS;
- (3) FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS; AND
- (4) TO STRIKE OUT THE ENTIRE SECOND AMENDED COMPLAINT; AND

(5) TO STRIKE OUT DESIGNATED PORTIONS OF THE SECOND AMENDED COMPLAINT.

Defendants L. M. Giannini, Individually, And As An Alleged Partner of Walston & Co., Gordon Gray, O. D. Hamlin, T. W. Harris, A. P. Jacobs, F. G. Stevenot, Russ Avery, P. A. Bricca, George J. De Martini, W. N. Lagomarsino, A. J. Scampini, Chester H. Loveland, [184] and Theodore M. Stuart do, and each of them does move the Court as follows:

MOTION TO DISMISS

1. To dismiss the action:

1. Because the Second Amended Complaint fails to state a claim against these defendants, or any of them, upon which relief can be granted;

2. Because there is a lack of indispensable parties defendant, to wit: the subsidiaries of defendant Transamerica Corporation, which are alleged to have suffered injury and detriment by the acts complained of;

3. Because the alleged claim set forth in said Second Amended Complaint against these defendants, and particularly against defendants Theodore M. Stuart and L. M. Giannini, as an alleged partner of Walston & Co., is barred by the provisions of Section 338, subdivision 4, and Section 339, subdivision 1, of the Code of Civil Procedure of the State of California; and

4. Because the alleged claim set forth in said Second Amended Complaint against defendants, and particularly against defendants Theodore M. Stu-

art and L. M. Giannini, as an alleged partner of Walston & Co., is barred by the laches of plaintiff in failing to use diligence in the prosecution of said claim and particularly by the long delay in making the defendants Theodore M. Stuart and L. M. Giannini, as an alleged partner of Walston & Co., parties to this action in the original complaint, which lack of diligence and delay have been highly prejudicial to said defendants.

5. Because the court lacks jurisdiction for the reason that the Second Amended Complaint sets forth certain injury and damage to the subsidiaries of Transamerica Corporation, and fails to set forth that the plaintiff is, or ever was, a stockholder of such subsidiaries, or any of them.

6. Because the Second Amended Complaint consists entirely of sham, irrelevant, redundant and evasive allegations of specific [185] facts, and is not in compliance with the directions and conditions of the above entitled court in granting to plaintiff permission to file a second amended complaint.

7. Because the plaintiff has completely disregarded the direction of this court at the time of the hearing of the motions to dismiss the First Amended Complaint requiring the plaintiff to set up her several causes of action in separate counts, in order that the various defendants, whether directors or otherwise, could set forth their several, separate, defenses to such portions of the second amended complaint as specifically concerned them.

MOTION TO SEPARATELY STATE

II. For an order requiring plaintiff to state in separate counts the claims founded upon the following separate transactions:

First, the transactions relating to A. P. Giannini's compensation, the gist of which appears in paragraphs XXVI to XXIX, inclusive, of the Second Amended Complaint, and in which it is alleged that Transamerica, and its corporate subsidiaries, departments and instrumentalities assumed a certain contract for compensation for the personal services of A. P. Giannini, which contract was made between Bancitaly Corporation and A. P. Giannini, and in which it is alleged that certain fraudulent entries were made with regard to said contract, and illegal payments were made thereon by Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities.

Second, the transaction, the gist of which appears in paragraphs XXX to XXXIII, inclusive, and in which, it is alleged, defendant Walston & Co. and its individual members were unjustly enriched from the funds, moneys, assets and properties of defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, to their serious injury and detriment in the sum and amount and to the extent of at least approximately \$548,000.00. [186]

Third, the transaction, the gist of which appears in paragraphs XXXIV to XXXVI, inclusive, and in respect to which it is alleged that defendants and others received substantial sums as profits from speculations carried on through Bankitaly Mortgage

Company, later Pacific Coast Mortgage Company, and were unjustly enriched in the amount of said alleged profits to the serious and irremediable injury and detriment of Transamerica, its corporate subsidiaries, departments and instrumentalities, in the sum and to the extent of approximately \$2,000,000.00.

Fourth, the transaction, the gist of which appears in paragraphs XXXVII and XXVIII, inclusive, and in respect to which it is alleged that the defendants and other persons received substantial sums as profits from speculations carried on through a trust syndicate of which Charles J. Smith and Margaret Mallory are alleged to have been the trustees, and were unjustly enriched in the amount of said alleged profits to the serious and irremediable injury and detriment of Transamerica, its corporate subsidiaries, departments and instrumentalities, and shareholders in the amount and to the extent of at least approximately \$300,000.00.

Fifth, the transaction, the gist of which appears in paragraph XXXIX and in respect of which it is alleged that defendants and others caused Transamerica and its corporate subsidiaries, departments, and instrumentalities to engage in the business of manipulating and stirring the market for the capital stock of Transamerica by soliciting orders from the general public for the purchase of the capital stock of Transamerica, and that large items of expense were incurred and losses suffered to the detriment of Transamerica, its corporate subsidiaries, departments, instrumentalities, and shareholders in the sum of approximately \$2,250,000.00.

This motion is made upon the ground that the Second Amended Complaint unites and does not state in separate counts and several claims founded upon separate transactions or occurrences (1) in [187] violation of the provisions of paragraph (b) of Rule 10 of the Federal Rules of Civil Procedure, and (2) in violation of the directions of this court made on Tuesday, June 23, 1942 that plaintiff's alleged right to recover in behalf of defendant Transamerica Corporation is based upon separate and different theories in each of the three transactions that a statement in separate counts of said three transactions will facilitate the clear presentation of the matters set forth, and that such a separate statement will facilitate the presentation of the separate defenses thereto of these defendants and of each of them.

This motion is made without prejudice to the motion hereinabove made to dismiss the action, based upon some of the same grounds, and the motion hereinafter made to strike the second amended complaint from the files, based upon the same ground.

MOTION FOR A MORE DEFINITE STATEMENT OR FOR A BILL OF PARTICULARS

III. For an order requiring plaintiff to make a more definite statement of, or a bill of particulars in respect to, the following matters, as to each of which defendants desire more definite particulars and in respect to each of which the Second Amended Complaint is defective: [188]

(Items relating to Transamerica's subsidiaries)

1. Which of the corporations referred to in paragraph XXVI and elsewhere in said Second Amended Complaint as "said corporation and its corporate subsidiaries, departments and instrumentalities" or by language of similar import (hereinafter in this motion referred to as "said corporations"), and if more than one to what extent each, was caused to acquire and absorb all of the capital stock of Bancitaly Corporation, as alleged in paragraph XXVI of said Second Amended Complaint (p. 17, line 26 to p. 18, line 1).

2. How and by what means was said transaction accomplished.

3. Which of said corporations, and if more than one to what extent each, was caused to acquire and absorb all of the assets of Bancitaly Corporation, as alleged in said paragraph XXVI (p. 17, line 26 to p. 18, line 1).

4. Which of said corporations, and if more than one to what extent each, was caused to appear to assume as its own obligations the alleged pretended, fraudulent and fictitious liabilities of said Bancitaly Corporation, as alleged in said paragraph XXVI (p. 17, line 26 to p. 18, line 17).

5. Which of said corporations, and if more than one to what extent each, was caused to make and enter certain purported false, fraudulent and fictitious credit entries, and upon the books of which of said corporations were said entries made, as alleged in paragraph XXVII (p. 19, line 19 to p. 20, line 6).

6. Which of said corporations, and if more than

one to what extent each, was caused to pay to defendants Amadeo P. Giannini and L. M. Giannini, and Virgil D. Giannini, now deceased, sums as alleged in paragraph XXVIII of said Second Amended Complaint (p. 20, line 30 to p. 21, line 29).

7. From the funds and assets of which of said corporations, and if more than one the extent as to each, were defendants, Amadeo P. Giannini and L. M. Giannini, and Virgil D. Giannini, [189] now deceased, unjustly enriched, and which of said corporations, and if more than one to what extent each, thereby suffered serious and irremediable injury and detriment, as alleged in paragraph XXVIII of said Second Amended Complaint (p. 21, line 30 to p. 22, line 15).

8. Upon the books of which of said corporations, and if more than one to what extent each, were the transactions complained of in paragraphs XXVI, XXVII concealed, as alleged in paragraph XXIX of said Second Amended Complaint (p. 22, line 17 to p. 23, line 8).

9. Which of said corporations, and if more than one to what extent each, was actively engaged in a profitable brokerage business when defendant Walston & Co. was formed, as alleged in paragraph XXX of said Second Amended Complaint (p. 23, lines 10-29).

10. Which of said corporations' brokerage business, and if more than one to what extent the brokerage business of each, was diverted to Walston & Co., as alleged in paragraph XXXI of said Second Amended Complaint (p. 23, line 31 to p. 24, line 19).

11. Which of said corporations, and if more than one to what extent each, was caused from time to time to disburse its funds and assets to Walston & Co., as alleged in paragraph XXXII of said Second Amended Complaint (p. 24, line 21 to p. 25, line 25).

12. To which of said corporations did the business alleged to have been diverted to Walston & Co. belong, and if more than one the extent as to each, as alleged in paragraph XXXII (p. 24, line 21 to p. 25, line 25).

13. From the funds, money, assets and properties of which of said corporations, and if more than one the extent as to each, were defendants unjustly enriched, as alleged in said paragraph XXXII (p. 24, line 21 to p. 25, line 25).

14. Which of said corporations, and if more than one to what extent each, was caused to pay and advance the sum of \$1,500,000.00, as alleged in paragraph XXXV of said Second Amended [190] Complaint (p. 26, line 29 to p. 27, line 25).

15. Which of said corporations, and if more than one to what extent each, suffered the alleged detriment resulting from the payments and advances alleged in paragraph XXXV of said Second Amended Complaint (p. 27, line 26 to p. 28, line 4).

16. To the extent that the same is not disclosed by the allegations of paragraphs XXII and XXIII of said Second Amended Complaint, what position did each defendant and each of the persons referred to in paragraph XXXVI hold in said corporations, and if in more than one the positions in each (p. 28, lines 18-31).

17. Which of said corporations, and if more

than one to what extent each, suffered the serious and irremediable injury and detriment alleged in paragraph XXXVI (p. 29, lines 13-17).

18. Which of said corporations, and if more than one to what extent each, was caused from time to time to pay and advance the sum of \$3,000,000.00 to the trustees mentioned in paragraph XXXVII of the Second Amended Complaint, as alleged in said paragraph (p. 29, line 19 to p. 30, line 4).

19. To the extent that the same is not disclosed by the allegations of paragraphs XXII and XXIII of said Second Amended Complaint, what official positions did the defendants and persons referred to in paragraph XXXVIII of said Second Amended Complaint hold in said corporations, and if in more than one, the positions in each (p. 30, line 31 to p. 31, line 4).

20. Which of said corporations, and if more than one to what extent each, suffered the serious and irremediable injury and detriment alleged in said paragraph XXXVIII (p. 31, lines 16-20).

21. Which of said corporations, and if more than one to what extent each, was caused to engage in the business of manipulating and steering the market for capital stock of defendant Transamerica Corporation and doing the other acts complained of in paragraph XXXIX of said Second Amended Complaint, as alleged in [191] said paragraph (p. 31, line 22 to p. 32, line 16).

22. Which of the items referred to in paragraph XL of said Second Amended Complaint were disguised, camouflaged, covered and concealed by entries on the books of which of said corporations, and

if more than one the extent as to each (p. 33, lines 11-15).

23. Has plaintiff at any time been the owner of shares of stock of any of the corporations alleged in paragraph II of the Second Amended Complaint to be subsidiaries of defendant Transamerica Corporation and, if so, for what period did plaintiff own stock in each of said subsidiaries, and what was the number of shares of stock owned by plaintiff in each.

(Items relating to plaintiff's excuse for her failure to make demand upon the directors and to appeal to the stockholders)

24. Upon what facts does plaintiff base her conclusion that an action to redress the alleged wrongs for which relief is sought in this action to be effective and complete must be directed against all of said defendants and persons named in the Second Amended Complaint, as alleged in paragraph XLII thereof (p. 36, lines 24-26).

25. What facts constitute the basis of plaintiff's conclusion that a demand upon the Board of Directors of defendant Transamerica Corporation to bring this action would be and constitute a futile and idle act, as alleged in paragraph XLII of said Second Amended Complaint (p. 36, lines 27-28).

26. How and by what methods and by what means have the defendants and persons referred to in paragraphs XXI and XLIII of said Second Amended Complaint had and exercised complete and exclusive control of the voting shares of stock of defendant Transamerica Corporation, as alleged

in said paragraphs of said Second Amended Complaint (p. 12, lines 14-25, and p. 36, line 30 to p. 37, [192] line 2, respectively); if by stock ownership, how many shares did they hold, what was the period of time during which shares were held, and whether such control included the 57 shares alleged to be owned by plaintiff, and if through proxies, the period during which said proxies were held and by whom.

27. Upon what facts does plaintiff base her conclusion that any demand upon the stockholders to be effective would first require an expensive and prolonged struggle with said adverse Boards of Directors and persons to wrest control of all the voting shares of stock of defendant Transamerica Corporation from them, as alleged in paragraph XLIII (p. 37, lines 17-20).

28. Upon what facts does plaintiff base her conclusion that such a struggle would also be a futile and idle act, as alleged in paragraph XLIII (p. 37, lines 20-21).

(Items relating to conclusions of law of the pleader)

29. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXVI, that the matters complained of in said paragraph were "without legal right or authority" (p. 17, lines 28-29).

30. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVI, that the salary agreement therein referred to was "pretended, fraudulent and fictitious" (p. 18, line 4).

31. What facts constitute the basis of plaintiff's

conclusion appearing in said paragraph XXVI, that the credit entries therein referred to were "pretended, fraudulent and fictitious" (p. 18, lines 11-12.)

32. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVI, that the profits of Bancitaly Corporation used as a basis of computation "were false, [193] fictitious, unearned and unrealized" (p. 19, lines 9-13).

33. - What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXVII, that the acts therein complained of were "without legal right or authority" (p. 19, lines 26-27).

34. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVII, that the credit entries therein referred to were "purported, false, fraudulent and fictitious" (p. 19, line 29).

35. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVII, that the total credit and each item thereof "was and is false, fraudulent, fictitious and untrue" (p. 20, lines 13-14).

36. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVIII, that certain defendants were "unjustly enriched" by the payments in said paragraph referred to (p. 21, line 30, to p. 22, line 2).

37. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVIII, that the alleged unjust enrichment was "to the serious and irremediable injury and detriment of said defendant corporation, and its corporate sub-

sidiaries, departments, instrumentalities and shareholders" (p. 22, lines 2-5).

38. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXIX, that the corporate transactions and acts therein referred to were "at all times covered, disguised, concealed and camouflaged" (p. 23, lines 3-4).

39. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXI, that the matters therein complained of were "without legal right or authority" (p. 24, line 4).

40. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXII, that the matters therein complained of were done "without legal right or authority" (p. 24, lines 23-24).

[194]

41. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXII, that the defendants therein referred to were "unjustly enriched" (p. 25, line 20).

42. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXII, that said alleged unjust enrichment was "to the serious and irremediable injury and detriment of said defendant, Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities" (p. 25, lines 20-23).

43. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXV, that the transaction therein complained of was "without legal right or authority" (p. 27, line 18.)

44. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXV,

that the loans and advances therein referred to were not "in the usual course of business" (p. 28, lines 9-10).

45. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXVI, that the defendants therein mentioned and each of them was "unjustly enriched" (p. 29, line 11).

46. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXVI, that said alleged unjust enrichment was "to the serious and irremediable injury and detriment of defendant Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders" (p. 29, lines 13-16).

47. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXVII, that the matter therein complained of was "without legal right or authority" (p. 29, line 22; p. 30, line 24).

48. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXVIII, that the defendants therein referred to were and each of them was "unjustly enriched" (p. 31, line 16).

[195]

49. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXVIII, that said alleged unjust enrichment was "to the serious and irremediable injury and detriment of the defendant, Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders" (p. 31, lines 16-19).

50. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXIX, that the matters in said paragraph complained of were

done "without legal right or authority" (p. 31, line 30).

51. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXIX, that the said matters were "to the serious and irremediable injury and detriment of said defendant, Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders" (p. 32, lines 12-14).

(Matters relating to the alleged discovery of the wrongs complained of)

52. Who called plaintiff's attention on April 27, 1939, to the proceeding pending before the Securities and Exchange Commission and the order of said Commission made therein on November 22, 1938, and released on November 25, 1938, as alleged in paragraph XLI of said Second Amended Complaint (p. 34, line 7 to p. 35, line 5); what was the relationship of said informant to plaintiff, and how long had such informant held such relationship to plaintiff.

53. Why was plaintiff's attention not called to said order of November 22, 1938, earlier than April 27, 1939.

54. Why did plaintiff not learn of said order on November 25, 1938, when the same was released.

(Items relating to the hypothetical and alternative allegations)

55. Whether, as alleged in paragraph XIX, all the defendants and all the persons named in paragraph XXIII of said Second Amended [196] Com-

plaint conspired and agreed one with the other as in paragraph XIX alleged, or whether some of them were not conspirators but mere puppets, or were neither conspirators nor puppets but merely failed to discover the alleged wrongs, or having discovered the alleged wrongs failed to take action, as alleged in paragraphs XXIV and XXV of said Second Amended Complaint (p. 14, line 31, to p. 17, line 24).

56. Which of the defendants and persons mentioned in said Second Amended Complaint were conspirators, which were puppets but not conspirators, which were neither conspirators nor puppets but failed to discover the alleged wrongful acts complained of, and which, being neither conspirators nor puppets, having discovered the alleged wrongful acts failed to take action, as alleged in paragraphs XIX, XXIV and XXV of the Second Amended Complaint (p. 17, lines 15-24).

The foregoing motion will be made on the ground that the Second Amended Complaint lacks definiteness in the particulars specified, and is defective in that regard, and that the details desired by the defendants joining in this motion, and each of them, are necessary to enable them and each of them properly to prepare their respective pleadings and to prepare for trial.

MOTION TO STRIKE OUT THE ENTIRE SECOND AMENDED COMPLAINT

IV. For an order striking the entire Second Amended Complaint from the files, for all the rea-

sons set forth in subdivisions 6 and 7 of the foregoing Motion to Dismiss.

MOTION TO STRIKE OUT DESIGNATED
PORTIONS OF THE SECOND AMENDED
COMPLAINT

V. In the alternative, and without prejudice to the foregoing motion to strike out the entire Second Amended Complaint, for [197] an order striking the following matters from the Second Amended Complaint:

1. All of paragraphs XXVI, XXVII, XXVIII, XXIX of the Second Amended Complaint, in which are set forth transactions by and with Bancitaly Corporation and showing credits entered and payments made on account of salary or compensation to A. P. Giannini for services rendered.

The foregoing motion will be made upon the ground that the matters above specified are redundant, immaterial and impertinent as to these defendants, and are barred by the statute of limitations of actions of the State of California, and by the laches of plaintiff.

Respectfully submitted,

RUSS AVERY and

GORDON GRAY,

By RUSS AVERY,

Attorneys for said defendants

L. M. Giannini, individually, and as an alleged partner of Walston & Co., Gordon Gray, O. D. Hamlin, T. W. Harris, A. P. Jacobs, F. G. Stevenot, Russ Avery, P. A. Bricca, George J. DeMartini,

W. N. Lagomarsino, A. J. Scampini, Chester H. Loveland, and Theodore M. Stuart.

RUSS AVERY,

In Pro per

604 Homer Laughlin Building

315 South Broadway,

Los Angeles, California.

GORDON GRAY,

In Pro per

Bank of America Building,

San Diego, California.

By RUSS AVERY. [198]

NOTICE OF MOTION

To Vincent A. Marco, Esq., Percy V. Clibborn, Esq., Homer N. Boardman, Esq., and Joseph A. Ruskay, Esq., Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motions on for hearing before this court (Honorable Harry A. Hollzer, District Judge), at court room No. 2, Post Office and Federal Courts Building, City of Los Angeles, California, on the 1st day of October, 1942, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

You Will Further Take Notice that all of said motions will be made upon the files and records herein, including the Reporter's Transcript of the proceedings herein had on June 23, 24 and 25, 1942, said motions and this notice, and the affidavits relating respectively (1) to the delivery to counsel for plaintiff herein of a copy of the letter of December

9, 1931, and (2) to the mailing of said letter in December, 1931, which affidavits are annexed to the motions herein of defendants A. H. Giannini, et al., made in respect to the Second Amended Complaint.

Please Take Further Notice that defendants L. M. Giannini, individually and as an alleged partner of Walston & Co., Gordon Gray, O. D. Hamlin, T. W. Harris, A. P. Jacobs, F. G. Stevenot, Russ Avery, P. A. Bricca, George J. De Martini, W. N. Lagomarsino, A. J. Scampini, Chester H. Loveland, and Theodore M. Stuart will rely upon Points and Authorities in support of said motions, a copy of which is herewith served upon you.

RUSS AVERY and GORDON
GRAY

By RUSS AVERY

Attorneys for said defendants L. M. Giannini, Individually and as an alleged partner of Walston & Co., Gordon Gray, O. D. Hamlin, T. W. Harris, A. P. Jacobs, F. G. Stevenot, Russ Avery, P. A. Bricca, George J. DeMartini, W. N. Lagomarsino, A. J. Scampini, Chester H. Loveland, and Theodore M. Stuart. [199]

RUSS AVERY

In Pro Per

604 Homer Laughlin Building,
315 South Broadway
Los Angeles, California.

GORDON GRAY

In Pro Per

Bank of America Building,
San Diego, California.

By RUSS AVERY [200]

Affidavit of Service by Mail—1013A, C. C. P.

State of California,

County of Los Angeles—ss.

Irene S. McAllister, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 315 South Broadway, Los Angeles, California. That on the 15th day of September, A.D., 1942, affiant served the within Motions by Defendants L. M. Giannini, et al. on the Plaintiff in said action, by placing a true copy thereof in an envelope addressed to Messrs. Vincent Anthony Marco, Homer N. Boardman, Percy V. Clibborn and Jos. A. Ruskay, at the business address of said Plaintiff's attorneys as follows: 9730 Wilshire Blvd., Beverly Hills, Cal. and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there is delivery service by United States mail at the place so addressed, there is a regular communication by mail between the place of mailing and the place so addressed.

IRENE S. McALLISTER

Subscribed and Sworn to before me this 15th day of September, 1942.

[Seal]

ELIZABETH SPRAGINS

Notary Public in and for said
County and State.

[Endorsed]: Filed Sep. 15, 1942. [201]

[Title of District Court and Cause.]

MOTION OF DEFENDANT BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, deceased,

- (1) TO DISMISS THE ACTION:
- (2) TO REQUIRE PLAINTIFF TO STATE SEPARATELY HER SEVERAL CAUSES OF ACTION; AND
- (3) FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS.

The defendant, Bank of America National Trust & Savings Association, as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, deceased, moves the court as follows:

MOTION TO DISMISS

I. To dismiss the action because the Second Amended Complaint and each cause of action therein attempted to be stated fails to state a claim against this moving defendant upon which relief can be granted. Said motion is based upon the following grounds:

(1) The complaint is generally insufficient to charge the defendants with any wrongful act or omission, all the allegations [202] in that behalf being the pleader's conclusions.

(2) The complaint fails to show that any claim has been filed with the defendant Bank of America

National Trust & Savings Association, as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, deceased.

(3) The complaint fails to show any demand upon the directors or the stockholders to maintain this action or any valid excuse for failure to make such demand.

(4) The claims set forth in the Second Amended Complaint against this moving defendant are barred by the laches of the plaintiff in failing to use due diligence in the commencement and prosecution of this action, which lack of diligence is prejudicial to this moving defendant.

(5) There is a failure to include as parties defendant or parties plaintiff persons who are indispensable parties to this action in that subsidiaries of the defendant Transamerica Corporation which are alleged to have suffered injury and detriment by reason of matters set forth in the Second Amended Complaint are not named as parties herein.

(6) The court lacks jurisdiction of the subject matter of this action for the reason that the Second Amended Complaint sets forth certain injuries and damages to subsidiaries of Transamerica Corporation and fails to set forth that the plaintiff was a stockholder of such subsidiaries, or any of them.

(7) The complaint consists entirely of sham, irrelevant, redundant and evasive allegations, and is not in compliance with the directions of the court in granting plaintiff permission to file a Second Amended Complaint.

(8) The plaintiff has wholly disregarded the directions of the court given at the hearing of the motions to dismiss the First Amended Complaint whereby plaintiff was required to state her causes of action separately. [203]

**MOTION TO REQUIRE PLAINTIFF TO
STATE SEPARATELY HER SEVERAL
CAUSES OF ACTION.**

II. For an order requiring plaintiff to state in separate counts the claims stated upon the following separate transactions:

(1) The transactions set forth in Paragraphs XXVI, XXVII and XXIX of said Second Amended Complaint in which it is alleged that Transamerica Corporation, its corporate subsidiaries, departments, and instrumentalities assumed a certain contract for compensation for the personal services of A. P. Giannini, which contract was made between A. P. Giannini and Bancitaly Corporation, and it is alleged that certain fraudulent entries were made with regard to said contract, and illegal payments made thereon by Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities. These transactions may be summarized as those relating to A. P. Giannini's compensation.

(2) The transactions the gist of which appears in Paragraphs XXX, XXXI, XXXII and XXXIII of the Second Amended Complaint, and in which it is alleged that on or about the 17th day of December, 1932, Amadeo P. Giannini and others

caused the organization of the firm of Walston & Co., and that during the years 1932 to 1938, inclusive, they caused funds and assets of Transamerica Corporation, its corporate subsidiaries, departments, and instrumentalities, to be transferred to said partnership, and furnished to Walston & Co. for use as capital the sum of \$548,000.00, to the detriment of Transamerica Corporation, its corporate subsidiaries, departments, and instrumentalities, in said amount.

(3) The transactions the gist of which appears in Paragraphs XXXIV to XXXVI, inclusive, in respect to which it is alleged that during said year 1932 certain funds not less than the sum of \$1,500,000.00 were advanced by Transamerica Corporation, its corporate subsidiaries, departments, and instrumentalities, to the [204] defendants, for the purpose of the acquisition of Bancitaly Mortgage Company, and that thereafter, Bancitaly Mortgage Company indulged in certain speculative transactions which resulted in a profit of \$2,000,000.00.

(4) The transactions the gist of which appears in Paragraphs XXXVII and XXXVIII in which it is alleged that Transamerica Corporation, its corporate subsidiaries, departments, and instrumentalities, advanced to Charles J. Smith and Margaret Mallory, Trustees, the sum of \$3,000,000.00 for speculative operations in the Capital stock of Transamerica Corporation, which said transactions resulted in a profit to said trust of \$3,000,000.00.

(5) The transaction the gist of which appears in Paragraph XXXIX, in which it is alleged that

in the years 1932 to 1937, inclusive, the defendants caused Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, to incur large items of expense and suffer losses with regard to the purchase of the capital stock of the defendant Transamerica Corporation, which caused injury and detriment to Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders, in the sum of not less than \$2,250,000.00.

This motion is made without prejudice to the motion heretofore made to dismiss the action based upon the same grounds.

This motion is also made upon the ground that the Second Amended Complaint unites and does not state in separate counts the several alleged claims founded upon separate alleged transactions or occurrences, in violation of the provisions of paragraph (b) of Rule 10 of the Federal Rules of Civil Procedure, and in violation of the directions of this Court, given at the time permission was granted to the plaintiff to file an amended bill. [205]

MOTION FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS

III. For an order requiring plaintiff to make a more definite statement of, or a bill of particulars, in respect to the following matters as to each of which defendant desires more definite particulars and in respect to each of which the Seconded Amended Complaint is defective:

(1) What was the number of shares of capital stock of defendant Transamerica Corporation on the date of the commencement of this action?

(2) Which of the corporations mentioned in Paragraph II were subsidiaries of Transamerica Corporation, which were departments, and which were instrumentalities, and what fractional part of stock of each of said corporations was owned by Transamerica Corporation?

(3) How or by what means the conspiring defendants would or could obtained or maintain control of the voting share of Transamerica Corporation as alleged in Paragraph XIX(a)?

(4) How or by what means the conspiring defendants would or could dominate the individual members of the Board of Directors as alleged in Paragraph XIX (a), it not being alleged that any of the defendants was a director in the year 1928, except Amadeo P. Giannini, James C. Bacigalupi, and P. C. Hale, and it not appearing that such persons constituted a majority of the Board of Directors or owned a majority of the stock of Transamerica Corporation?

(5) How or by what means the majority of members of the Board of Directors would or should or could be elected from the membership of the conspiracy, as alleged in Paragraph XIX (b)?

(6) How or by what means the non-conspiring directors should or could be made puppets, dummies, or alter egos for the conspirators, it appearing that they were not directors in October, [206] 1928,

when the conspiracy was formed, or as to a large number of them, until the year 1932?

(7) How or in what amount Transamerica Corporation was injured by the manipulation of its stock upon the Securities Exchange by the conspirators, or how any dealing by the conspirators in the stock of the corporation could injure it, as alleged in Paragraph XIX (e)?

(8) What brokerage business of Transamerica Corporation was to be diverted to other corporations alleged by the conspirators or by what means or how such diversion would injure Transamerica Corporation?

(9) How or in what manner the conspiracy to the effect that non-conspiring directors would remain absent from the meetings of the Board of Directors did, or could, injure Transamerica Corporation, it appearing from the complaint that many of the directors who because such after October 11, 1928, were not directors at that time, it appearing by the allegations of Paragraph XXV that some of the directors were not members of the conspiracy?

(10) How or by what means the act of the conspiring defendants were to be concealed or disguised from the other shareholders or directors, or in what respect the records were to be untrue, as alleged in Paragraph XIX (h)?

(11) In what manner and in what respect the records of Transamerica Corporation were untrue or false or camouflaged, and what misleading names, designations, and acts were employed by the conspirators as alleged in Paragraph XIX (h)?

(12) Whether the parties to the conspiracy who were directors when the conspiracy was formed on October 11, 1928, did thereafter continue in control or whether they lost control, and when, and whether if having lost control they ever regained control of the Board of Directors, and when? [207]

(13) By what means the "said defendants and persons procured, obtained, had, held, and exercised" full control of the outstanding shares of the stock of the Transamerica Corporation as alleged in Paragraph XXI, it not being alleged they owned a controlling stock interest?

(14) Whether the defendants or the other persons mentioned in Paragraph XXI controlled the stock of Transamerica Corporation or to what extent the defendants controlled and to what extent the other persons controlled?

(15) How and by what means the non-conspiring members of the Board of Directors were wholly and completely controlled, directed, and nominated by the defendant directors, as alleged in Paragraph XXIV?

(16) Whether the non-conspiring directors failed to discover the wrongful acts complained of or discovered such acts and failed to take action, as alleged in Paragraph XXV?

(17) Why or how or by reason of what facts the action of the defendants and the other persons in causing Transamerica Corporation to acquire the capital assets of Bankitaly Corporation and assume its obligations was without legal right or authority, as alleged in Paragraph XXIV?

(18) How or why or in what respect the salary agreement between Amadeo P. Giannini and Bankitaly Corporation was fraudulent or fictitious, as alleged in Paragraph XXIV?

(19) How or in what respect the credit entry pursuant to the salary agreement was fictitious or fraudulent or in what respect the names and designations used in connection therewith were false or fictitious?

(20) How or in what respect or by reason of what fact the liability of Bankitaly Corporation evidenced by the salary agreement was fraudulent or fictitious? [208]

(21) Why the plaintiff is unable to make a more definite or certain statement with respect to the matters above mentioned in Paragraph XXVII than are made by the plaintiff?

(22) What were the actual net profits of Transamerica Corporation and its subsidiaries and in what manner and to what extent the credits represented false, fictitious, unearned, and unrealized profits?

(23) How or in what manner Transamerica Corporation was injured in the amount of \$3,700,000.00, it being alleged that is the amount paid to the Gianninis, and it not being shown to what extent that amount was false or fictitious, nor that the services of Amadeo P. Giannini were not worth that sum?

(24) How or in what manner the entries in the books of Transamerica Corporation, as alleged in

Paragraph XXIX were covered, disguised, concealed, and camouflaged, or in what respect the entries were false, fictitious, misleading and untrue?

(25) Whether Transamerica Corporation or its subsidiaries, departments, or instrumentalities owned the investment, security, and brokerage business referred to in Paragraph XX?

(26) What, if anything, was the value of said business?

(27) How or in what manner the formation of the copartnership of Walston & Co. did or could unjustly enrich Amadeo P. Giannini, L. M. Giannini, Claire Giannini Hoffman, and Virgil D. Giannini, to the detriment of Transamerica Corporation, its subsidiaries, and shareholders?

(28) How or by what means the defendants herein did or could cause the co-partnership of Walston & Co. to be formed, it not appearing from the complaint that all of the partners were ever members of the Board of Directors of Transamerica Corporation or members of the conspiracy attempted to be alleged in the complaint? [209]

(29) Whether the security and brokerage business alleged to have been engaged in by Transamerica Corporation and its subsidiaries was a business for themselves or for the public?

(30) When or in what manner the defendants caused Transamerica Corporation and its subsidiaries "to transfer and divert all of the said investment, security, and brokerage business thereof" to Walston & Co., it appearing from the complaint

that such acts were done in the years 1933, 1934, 1935, 1936, 1937, and 1938, and it not appearing what part of the business was transferred in any of the said years, but it appearing from the allegations of Paragraph XXI that during the said years Transamerica Corporation and its subsidiaries entrusted certain brokerage orders and business to Walston & Co., for execution, and there being no allegation that Walston & Co. did not perform the said business, execute said orders, and render brokerage service worth all that was paid?

(31) By reason of what fact the transfer and diversion of the business to Walston & Co., "was without legal right or authority" as alleged in Paragraph XXXI?

(32) How or by reason of what fact the brokerage business referred to in Paragraph XXXII "belonged to defendant Transamerica Corporation and its subsidiaries", it appearing from the allegations of Paragraph XXXII merely that Transamerica Corporation and its subsidiaries entrusted brokerage business to Walston & Co. by way of commission to buy or sell, and paid compensation to Walston & Co. for the performances of such service?

(33) How or in what manner Walston & Co. was unjustly enriched or Transamerica Corporation and its subsidiaries injured by the transactions alleged in Paragraph XXXII, and by reason of what facts such enrichment was unjust?

(34) How or in what manner the earnings and

profits of the brokerage partnership of Walston & Co., were withheld from the re- [210] cords of Transamerica Corporation and its subsidiaries, or why such earnings should have been included in their records, or how or by reason of what fact Transamerica Corporation and its subsidiaries were concerned with the earnings and profits of the brokerage firm of Walston & Co., it being alleged only that Transamerica Corporation and its subsidiaries entrusted brokerage business to Walston & Co. and paid compensation for performance thereof?

(35) How or by what means the defendants formed or organized the private trust referred to in Paragraph XXXIV, or could have done so, and by reason of what writing or other agreement the defendants and other persons named in the complaint were beneficiaries?

(36) How or in what respect the payment and advance of funds and assets of Transamerica Corporation and its subsidiaries to the trust was "without legal right or authority"?

(37) How or in what respect Transamerica Corporation was injured by the operations of the said trust referred to in Paragraph XXXIV?

(38) How or in what manner any of the matters alleged in Paragraph XXXV with respect to the acquisitions of the stock of Bankitaly Mortgage Company and speculative operations of the defendants injured Transamerica Corporation?

(39) How or in what manner the change of name of Bankitaly Mortgage Company to Pacific

Coast Mortgage Company concealed the nature and extent of the defendants' interests in the said company?

(40) How or in what manner Transamerica Corporation was injured by the speculative operations in the capital stock of Transamerica Corporation as alleged in Paragraph XXXVI?

(41) How or by what fact or reason the payment and advance of funds to Charles J. Smith and Margaret Mallory as alleged in Paragraph XXXVII was without legal right or authority?

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(42) How or in what manner Transamerica Corporation was injured by any of the matters alleged in Paragraph XXXVII?

(43) How or by reason of what fact Transamerica Corporation was entitled to any of the profits of Charles J. Smith and Margaret Mallory referred to in Paragraph XXXVIII?

(44) Why or by reason of what fact the manipulations by Transamerica Corporation and its subsidiaries of the capital stock of Transamerica Corporation "and creating a demand therefor by soliciting orders from the general public" for the purchase of Transamerica Corporation stock was "without legal right or authority", it appearing from the general allegations of the complaint that Transamerica Corporation was a corporation of large capitalization with wide spread stock ownership numbering approximately 200,000 stockholders, and it being presumed to be to the benefit of its stockholders to maintain a market for the stock?

(45) How or in what manner the manipulations of the stock and the solicitation of orders from the public was to the detriment of Transamerica Corporation and its shareholders, or why or in what manner it enhanced the personal, private, and individual interests of the defendants as alleged in Paragraph XXXIX?

(46) Whether all of the matters referred to in Paragraph XL were "withheld from the corporation records or books of account" of Transamerica Corporation, or whether "each item was upon the corporation records of the said defendant corporation and its corporate subsidiaries, departments, and instrumentalities, disguised, camouflaged, covered, and concealed", and if the latter, by what means and in what manner were such entries disguised, camouflaged, covered, and concealed, and in what manner were the records of said corporation "false, fictitious, and misleading" as alleged in paragraph XL. [212]

(47) Whether any of the 200,000 stockholders of Transamerica Corporation, other than the plaintiff and the defendants herein and the alleged conspirators, were ignorant of the matters alleged in the complaint during the time plaintiff alleges she was ignorant of such facts, and when other stockholders became aware of the facts alleged in the complaint or of the facts sufficient to arouse suspicion and inquiry about the matters alleged in the complaint?

(48) How and under what circumstances the plaintiff learned on or about April 27, 1939, that

the proceeding was pending to suspend Transamerica Corporation from its registration on stock exchanges, it being alleged that the Securities and Exchange Commission had ordered a hearing on November 22, 1938, and publicly announced that fact on November 25, 1938, and why plaintiff did not and could not have earlier discovered that fact?

GEORGE D. SCHILLING

G. L. BERREY

Attorneys for defendant Bank of America National Trust & Savings Association, as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, deceased.

The address of said attorneys is:

410 Bank of America Building,
Los Angeles, California,
TRinity 4353 [213]

NOTICE OF MOTION

To Vincent A. Marco, Esq., Percy V. Clibborn, Esq., Homer N. Boardman, Esq., and Joseph A. Rus-kay, Esq., Attorneys for Plaintiff, and to Plain-tiff Herein:

You, And Each Of You, will please take notice that the undersigned will bring the within and fore-going motions on for hearing before this Court Honorable Harry A. Hollzer, District Judge, at Court Room No. 2, Post Office and Court House Building, Los Angeles, California, on the 1st day of October, 1942, at 10:00 o'clock a. m., or as soon thereafter as counsel can be heard.

You Will Further Take Notice that all of said motions will be made upon the files and records herein, including the second amended complaint, said motions and this notice, and the affidavits of Edmund Nelson and Hector Compana served and filed with the motions of the defendants A. H. Giannini, and others, to dismiss the action.

Please Take Further Notice that the defendant Bank of America National Trust & Savings Association, as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, deceased, will rely upon points and authorities in support of said motions, a copy of which is herewith served upon you.

Dated this 15th day of September, 1942.

GEORGE D. SCHILLING

G. L. BERREY

By G. L. BERREY

Attorneys for Bank of America National Trust & Savings Association, as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, 410 Bank of America Building, Los Angeles, California, TRinity 4353. [214]

AFFIDAVIT OF MAILING

State of California

County of Los Angeles—ss.

Gertrude Mosher on oath says: I am a citizen of the United States and a resident of said county. I am over the age of eighteen years and not a party to the above entitled action. My business address is 650 South Spring Street, Los Angeles, California.

On the 15th day of September, 1942, I served the attached Motion to dismiss, etc. and notice thereof on Vincent A. Marco, one of the attorney(s) for plaintiff in said action by putting a true copy thereof enclosed in a sealed envelope, addressed to said attorney(s) at his business address at: 9730 Wilshire Boulevard, Beverly Hills, California, in the post office at Los Angeles, California, with postage thereon fully prepaid. There is regular communication by mail between the place of mailing and the place so addressed.

GERTRUDE MOSHER

Subscribed and sworn to before me this 15th day of Sept., 1942.

[Seal]

CLARA KLEINMAN

Notary Public in and for said county and state.

[Endorsed]: Filed Sep. 15, 1942. [215]

[Title of District Court and Cause.]

MOTIONS BY DEFENDANTS A. H. GIANNINI, WILLIAM E. BLAUER, LEON BOCQUERAZ, E. H. CLARK, CHARLES N. HAWKINS, W. F. MORRISH, A. J. MOUNT, ALFRED E. SBARBORO, JAMES A. BACIGALUPI, GEORGE A. WEBSTER, C. R. BELL, W. W. GARTHWAITE AND LOUIS FERRARI, JOINTLY AND SEVERALLY:

- I. TO DISMISS THE ACTION;
- II. TO SEPARATELY STATE THE SEVERAL CAUSES OF ACTION IN SEPARATE COUNTS, SAID MOTION BEING WITHOUT PREJUDICE TO MOTIONS TO DISMISS AND TO STRIKE, BASED ON SAME GROUND;
- III. FOR A MORE DEFINITE STATEMENT AND BILL OF PARTICULARS;
- IV. TO STRIKE OUT THE ENTIRE SECOND AMENDED COMPLAINT; AND
- V. TO STRIKE OUT DESIGNATED PORTIONS OF THE SECOND AMENDED COMPLAINT. [216]

Defendants A. H. Giannini, William E. Blauer, Leon Bocqueraz, E. H. Clark, Charles N. Hawkins, W. F. Morrish, A. J. Mount, Alfred E. Sbarboro, James A. Bacigalupi, George A. Webster, C. R.

Bell, W. W. Garthwaite and Louis Ferrari, jointly, and each severally, move the Court as follows:

MOTION TO DISMISS.

I. To dismiss the above entitled action,

(a) because the Second Amended Complaint fails to state a claim against the said defendants jointly, or against any one or more of them jointly with others, or against any of said defendants severally, upon which relief can be granted;

(b) because the alleged claim set forth in said Second Amended Complaint against these defendants, jointly and severally, is barred by the provisions of Section 338, subdivision 4, Section 339, subdivision 1, and Section 343, of the Code of Civil Procedure;

(c) because the alleged claim set forth in said Second Amended Complaint against these defendants, jointly and severally, is barred by the laches of said plaintiff in failing to use due diligence in the prosecution of said claim, and by the long delay in filing this action, which lack of diligence and delay have been highly prejudicial to these defendants; and because, as to certain of the defendants joining in this motion, the plaintiff has been guilty of gross laches and prejudicial delay in not sooner making said defendants parties to this action;

(d) because there is a failure to include indispensable parties defendant as parties to the Second Amended Complaint, in that the subsidiaries of the defendant Transamerica Corporation which are alleged to have suffered injury and detriment by rea-

son [217] of the matters set forth in said Second Amended Complaint are not named parties therein;

(e) because the Court lacks jurisdiction for the reason that the Second Amended Complaint sets forth certain injury and damage to the subsidiaries of Transamerica, and fails to set forth that the plaintiff was a stockholder of such subsidiaries, or any of them;

(f) because the complaint consists entirely of sham, irrelevant, redundant and evasive allegations, and is not in compliance with the directions of the above Court in granting to plaintiff permission to file a Second Amended Complaint, and fails to set forth the undisputed facts that on December 9, 1931 the stockholders of Transamerica Corporation, including plaintiff, were sent a letter advising them that A. P. Giannini had received for his compensation the credits referred to in the Second Amended Complaint, and had withdrawn all but \$792,000.00 thereof, and that plaintiff had notice that thereafter, in February, 1932, A. P. Giannini was re-elected a director and officer of said corporation;

(g) because the said plaintiff has entirely disregarded the directions of this Court at the time of the hearing of the motions to dismiss the First Amended Complaint, with regard to setting up his causes of action in separate counts, so that defendants who were directors of the corporation, or otherwise participated in the transactions complained of, could set forth their defenses to such portions of the complaint as concern them, and would not be

called upon to answer or defend against charges made against other defendants with regard to transactions with which they were in nowise concerned.

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MOTION TO SEPARATELY STATE THE SEVERAL CAUSES OF ACTION IN SEPARATE COUNTS.

II. For an order requiring plaintiff to state in separate counts the claims founded upon the following separate transactions:

First: The transactions set forth in paragraphs XXVI, XXVII, XXVIII and XXIX of said Second Amended Complaint in which it is alleged that Transamerica, its corporate subsidiaries, departments and instrumentalities assumed a certain contract for compensation for the personal services of A. P. Giannini, which contract was made between A. P. Giannini and Bancitaly Corporation, and it is alleged that certain fraudulent entries were made with regard to said contract, and illegal payments made thereon by Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities. These transactions may be summarized as those relating to A. P. Giannini's compensation.

Second: The transactions the gist of which appears in paragraphs XXX, XXXI, XXXII and XXXIII of the Second Amended Complaint, and in which it is alleged that on or about the 17th day of December, 1932, Amadeo P. Giannini and others caused the organization of the firm of Walston & Co., and that during the years 1932 to 1938,

inclusive, they caused funds and assets of Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, to be transferred to said partnership, and furnished to Walston & Co. for use as capital the sum of \$548,000.00, to the detriment of Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, in said amount.

Third: The transactions the gist of which appears in paragraphs XXXIV to XXXVI, inclusive, in respect to which it is alleged that during said year 1932 certain funds not less than the [219] sum of \$1,500,000.00 were advanced by Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, to the defendants, for the purpose of the acquisition of Bancitaly Mortgage Company, and that thereafter Bancitaly Mortgage Company indulged in certain speculative transactions which resulted in a profit of \$2,000,000.00.

Fourth: The transactions the gist of which appears in paragraphs XXXVII to XXXVIII, inclusive, in which it is alleged that Transamerica, its corporate subsidiaries, departments and instrumentalities, advanced to Charles J. Smith and Margaret Mallory, Trustees, the sum of \$3,000,000.00 for speculative operations in the capital stock of Transamerica Corporation, which said transactions resulted in a profit to said trust of \$300,000.00

Fifth: The transaction the gist of which appears in paragraph XXXIX, in which it is alleged that in the years 1932 to 1937, inclusive, the defendants caused Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, to

incur large items of expense and suffer losses with regard to the purchase of the capital stock of the defendant Transamerica Corporation, which caused injury and detriment to Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders, in the sum of not less than \$2,250,000.00.

This motion is made without prejudice to the motion heretofore made to dismiss the action, based upon the same ground, and the motion hereinafter made to strike the complaint from the file on the same ground.

This motion is made upon the ground that the Second Amended Complaint unites and does not state in separate counts the several alleged claims founded upon separate alleged transactions or occurrences, in violation of the provisions of paragraph (b) of [220] Rule 10 of the Federal Rules of Civil Procedure, and in violation of the directions of this Court, given at the time permission was granted to the plaintiff to file an amended bill; that the defendants involved in the first alleged transaction are not the same as the defendants involved in the second, third, fourth or fifth transaction; that the defendants involved in the second, third, fourth and fifth transactions are different; that according to the allegations of the Second Amended Complaint the defendants joining in this motion were directors during only a portion of the time that some of the transactions set forth in the first cause of action occurred; that the plaintiff's alleged right to recover in behalf of Transamerica Corporation

is based upon separate and distinct theories respecting each of said five alleged transactions; that plaintiff's alleged right to recover in behalf of Transamerica is based upon separate and distinct facts with reference to each of said five alleged transactions; that said five alleged transactions are alleged to have occurred during different times, and the officers and directors of Transamerica Corporation during the time of said alleged respective transactions were different; that a statement in separate counts of said five transactions will facilitate the clear presentation of the special defenses thereto of the defendants herein named, both severally and jointly, and will avoid the necessity on the part of these defendants of making answer to or defending against alleged transactions in which they admittedly were not involved, and said separate statement is necessary in order to permit these defendants to assert their defense to said action.

MOTION FOR A MORE DEFINITE STATEMENT OR A BILL OF PARTICULARS.

III. For an order requiring the plaintiff to make a more [221] definite statement of or bill of particulars with respect to, the following items, as to each of which these defendants desire more definite particulars, and as to which the Second Amended Complaint is defective:

1. What was the total amount of issued and outstanding shares of capital stock of Transamerica on the date of commencement of this action, as contrasted with the fifty-seven shares owned by the

plaintiff, as set forth in paragraph III of the Second Amended Complaint.

2. What was the extent of the ownership of the stock of the defendant Transamerica, of defendants Amadeo P. Giannini, L. M. Giannini, John M. Grant, and the other defendants, and what were the periods of time during which said shares were held, and particularly, whether the stock owned, if any, by all of the defendants, equalled a majority of the stock of Transamerica Corporation.

3. What was the extent and number of the shares of stock of defendant Transamerica Corporation, as to which the defendants Amadeo P. Giannini, L. M. Giannini, and other defendants, held proxies, and what was the period of time during which such proxies were held.

4. How or in what manner the defendants procured, obtained, had, held and exercised full, complete and exclusive control of all of the issued and outstanding voting shares of capital stock of defendant Transamerica Corporation, as alleged in paragraph XXI, page 12, lines 14 to 19, of said Second Amended Complaint; what was the period of time during which said shares were held, and whether such control included the fifty-seven shares alleged to be owned by the plaintiff; whether such control was through proxies or stock ownership, and if through proxies, the period of time during which said proxies were held, and by [222] whom.

5. Whether the members of the Board of Directors of Transamerica Corporation, as set out in paragraph XXII, page 12, line 27, to page 13, line 6,

at all times constituted a majority of the members of said Board of Directors, and if not at all times, then at what times.

6. Who were the directors who were not members of the alleged conspiracy, and who were not puppet and dummy directors, who discovered the matters complained of in said Second Amended Complaint and failed to take action to redress or prevent the continuance of said wrong, as alleged in paragraph XXV, page 17, lines 15 to 24, of said Second Amended Complaint, and whether said members of the Board of Directors constituted a majority thereof, and the times during which they were directors.

7. Wherein the action of the defendant Transamerica Corporation in the absorption of the capital stock and assets of Bancitaly Corporation was without legal right or authority, as alleged in paragraph XXVI, page 17, line 26, to page 18, line 28, of said Second Amended Complaint, and wherein the entries referred to in said paragraph were pretended, fraudulent and fictitious.

8. Wherein the liability of said Bancitaly Corporation, as evidenced by said salary agreement, was pretended, fraudulent and fictitious, as alleged in paragraph XXVI, page 18, lines 1 and 2, of said Amended Complaint, and whether, at the time of the assumption of said contract by Transamerica Corporation on the 25th day of May, 1929, as alleged in paragraph XXVI of said Amended Complaint, or thereafter, these defendants, or any of them, knew that said contract was fictitious, void or fraudulent.

9. To what extent were the credit entries referred to in paragraph XXVII, page 20, lines 7 to 28, of said Second Amended Complaint, in excess of the actual and true net profits of [223] Bancitaly Corporation or Transamerica Corporation.

10. Wherein were the entries made by Transamerica Corporation and its subsidiaries with regard to said contract of employment, as alleged in paragraph XXVII, page 19, line 19, to page 20, line 6, "purported, false, fraudulent and fictitious."

11. Wherein did the amount credited to Amadeo P. Giannini, L. M. Giannini and Virgil Giannini, not truly and correctly represent five per cent of the actual and true net profits of said corporation and its corporate subsidiaries for said period, as alleged in paragraph XXVII, lines 7 to 17, of said Second Amended Complaint, and wherein was the said salary computed upon false, fictitious, unearned and unrealized profits, and to what extent was it so computed, as alleged in paragraph XXVII, page 20, lines 17 to 20.

12. In what respect was the payment of \$3,700,000.00 made to A. P. Giannini and others, as alleged in paragraph XXVIII, page 20, line 30, to page 21, line 19, without legal right or authority; to what extent, if any, did the said amount exceed 5% of the actual and true net profits of Transamerica Corporation, and wherein were the defendants Amadeo P. Giannini, L. M. Giannini and Virgil Giannini unjustly enriched in the sum of \$3,700,000.00, as alleged in paragraph XXVIII of said Second Amended Complaint, page 21, line 29, to page 22, line 15.

13. Wherein the records and books of account kept and maintained by Transamerica Corporation were manipulated by an involved, intricate and complex system of accounting, as alleged in paragraph XXIX, page 22, lines 24 to 27, of said Second Amended Complaint, and how the said system of accounting was in conflict with the usual, customary, and proper and recognized principles of the science of accounting, and what were the false, misleading, untrue and fictitious names and designations under which payments [224] and disbursements to defendant Amadeo P. Giannini, as alleged in said paragraph XXIX, page 23, lines 3 to 8, were covered, disguised and concealed; and what was the knowledge and understanding of the plaintiff with respect to accounting.

14. What acts alleged in the complaint were committed by the defendants joining in this motion, and the time, facts and circumstances connected therewith.

15. What part of the alleged \$3,700,000.00 referred to in paragraph XXVI to XXIX was paid from the assets of Transamerica, and what part was paid from the assets of its subsidiaries, and the amount paid by each.

In respect to this motion and the specifications therein contained, this motion is made in the alternative, and without prejudice to the Motion to Strike, based in whole or in part on the same grounds, and without prejudice to the foregoing motion to dismiss, and to state separate causes of action in separate counts.

The foregoing motion will be made upon the ground that the Second Amended Complaint lacks definiteness in the particulars specified, and is defective in that regard, and that the details desired by the defendants joining in this motion, and each of them, are necessary to enable them, and each of them, to properly prepare their or his responsive pleading, and to prepare for trial.

**MOTION TO STRIKE OUT THE ENTIRE
SECOND AMENDED COMPLAINT**

IV. For an order striking the entire Second Amended Complaint from the files, for all the reasons set forth in subdivisions (f) and (g) of the foregoing Motion to Dismiss. [225]

**MOTION TO STRIKE OUT DESIGNATED
PORTIONS OF THE SECOND AMENDED
COMPLAINT**

V. In the alternative, and without prejudice to the foregoing motion to strike the entire complaint, for an order striking the following matters from the Second Amended Complaint:

1. All of paragraphs XXX to XLI, inclusive, in which are set forth transactions alleged to have been entered into after these defendants had ceased to be members of the Board of Directors, or otherwise connected with Transamerica Corporation.

2. All of paragraph XIX of said Second Amended Complaint, on the ground that in said paragraph the said plaintiff alleges a conspiracy entered into by defendants and a great number of other persons, but fails to set forth in the said Sec-

ond Amended Complaint any overt act performed by these defendants, or any of them, from which any damage arose, or that these defendants authorized or assisted in, or even had knowledge of, any such overt act.

Said motion will be made upon the ground that the matters above specified are, as to the defendants joining in this motion, redundant, immaterial and impertinent.

KEYES & ERSKINE,
By HERBERT W. ERSKINE,
HERBERT W. ERSKINE,
LOUIS FERRARI,

Attorneys for defendants A. H. Giannini, William E. Blauer, Leon Bocqueraz, E. H. Clark, Charles N. Hawkins, W. F. Morrish, A. J. Mount, Alfred E. Sbarboro, James A. Bacigalupi, George A. Webster, C. R. Bell, W. W. Garthwaite and Louis Ferrari, jointly and severally.

The address of said attorneys is:
625 Market Street,
San Francisco, California. [226]

NOTICE OF MOTION

To Vincent A. Marco, Esq., Percy V. Clibborn, Esq., Homer N. Boardman, Esq., and Joseph A. Rus-
kay, Esq., Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motions on for hearing before this Court Honorable Harry A. Hollzer, District Judge at Court Room No. 2, Post Office and Federal

Courts Building, City of Los Angeles, California, on the 1st day of October, 1942, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

You Will Further Take Notice that all of said motions will be made upon the files and records herein, including the Second Amended Complaint, said motions and this notice, and the affidavits of Edmund Nelson and Hector Campana attached hereto.

Please Take Further Notice that defendants A. H. Giannini, William E. Blauer, Leon Bocqueraz, E. H. Clark, Charles N. Hawkins, W. F. Morrish, A. J. Mount, Alfred E. Scarboro, James A. Bacigalupi, George A. Webster, C. R. Bell, W. W. Garthwaite and Louis Ferrari will, jointly and severally, rely upon points and authorities in support of said motions, a copy of which is herewith served upon you.

Dated: September 15, 1942.

KEYES & ERSKINE,
By HERBERT W. ERSKINE,
HERBERT W. ERSKINE,
LOUIS FERRARI,

Attorneys for Defendants A. H. Giannini, William E. Blauer, Leon Bosqueraz, E. H. Clark, Charles N. Hawkins, W. F. Morrish, A. J. Mount, Alfred E. Sbarboro, James A. Bacigalupi, George A. Webster, C. R. Bell, W. W. Garthwaite and Louis Ferrari, jointly and severally,

625 Market Street,
San Francisco, California. [227]

[Title of District Court and Cause.]

AFFIDAVIT OF EDMUND NELSON

State of California

County of Los Angeles—ss

Edmund Nelson, being first duly sworn, deposes and says:

I am now and for many years last past have been an attorney at law admitted to practice in the courts of the State of California and in the District Courts of the United States in said State. My office and place of business is at 650 South Spring Street, in the City of Los Angeles, in said State. I am the attorney of record in the above entitled action for the defendant, Transamerica Corporation. [228]

I was present in the Court Room of Hon. Harry A. Hollzer, Judge of the above entitled court, during the hearings on June 23, June 24 and June 25, 1942, on the motions of several of the other defendants to dismiss said action and for other relief, except for the period of about one hour in the forenoon of June 25th. During the course of the arguments I heard the discussions of other counsel in the case and of the Judge of the Court with reference to certain information requested by counsel for the plaintiff in said action, and by counsel for the plaintiff in another action on hearing at the same time entitled *Abrams vs. Avery, et al.*, numbered 1393-H on the Register of Actions of said court.

On August 6, 1942, at Los Angeles, California, on request of counsel for the plaintiff in the above entitled action, I delivered to said counsel the following:

1. Copies of the form of 14 proxies by which stock of Transamerica Corporation was voted at its stockholder elections from February 9, 1929, to and including March 26, 1942, with a statement attached to each proxy form showing the date each proxy was used, the number of shares then outstanding, the number of shares voted by the proxy, the number of shares voted in person, and the total number of shares voted.

2. A list of the persons who were elected and held office as directors of Transamerica Corporation from October 31, 1928, to March 26, 1942.

3. A copy of a communication addressed to the stockholders of Transamerica Corporation by [229] Elisha Walker and James A. Bacigalupi on December 9, 1931.

4. A copy of a communication addressed to the stockholders of Transamerica Corporation by Elisha Walker and James A. Bacigalupi on January 30, 1932.

On August 7, 1942, at the same place, on request of counsel for the plaintiff in said case entitled *Abrams vs. Avery, et al.*, I delivered to said counsel copies of the same papers.

Further affiant sayeth not.

EDMUND NELSON.

Subscribed and sworn to before me this 11th day of September, 1942.

[Seal] CLARA KLEINMAN,

Notary Public in and for the County of Los Angeles, State of California. [230]

[Title of District Court and Cause.]

AFFIDAVIT OF HECTOR CAMPANA

State of California

City and County of San Francisco—ss.

Hector Campana, first being duly sworn, deposes and says:

That he is a citizen of the United States, and a resident of Larkspur, Marin County, State of California; that he is an officer, to-wit, Vice President, of Transamerica Corporation, and has been such for four years last past;

That during all of the years 1930 and 1931 he was an Assistant Secretary of Transamerica Corporation; that part of his duties as such Assistant Secretary was the mailing to stockholders of such notices, Communications and dividend checks as the corporation sent to its stockholders; that he received the said notices, communications and dividend checks from the officers of the corporation, and attended to the printing of the notices and communications, and to the disbursement of the dividends; that the mailing of such notices, communications and dividend checks was under his direct supervision;

That a few days prior to the 8th day of December, 1931, [231] he was given by the officers of Transamerica Corporation a letter to stockholders, dated December 9, 1931, a copy of which is hereunto annexed and marked Exhibit "A", and which is referred to in the accompanying affidavit of Edmund Nelson; that he was directed to have said letter printed and sent to all the stockholders of said

corporation whose names appeared as such on the books of said corporation; that he personally supervised the printing and mailing of said letter; that copies of said letter were enclosed in an envelope, properly sealed, addressed to each stockholder, at the address of said stockholder as it appeared on the books of the corporation, with the postage thereon prepaid; that upon said envelope was printed the following: "If Not Delivered in Five Days, Return to Box 3152, San Francisco, California." That said Box No. 3152 was a Post Office box, at which was delivered mail addressed to Transamerica Corporation, and said Transamerica Corporation received its mail addressed to it in San Francisco at said box.

That the said envelopes containing the said letters so addressed and with postage prepaid were, on or about the 8th day of December, 1931, delivered to the United States Post Office in San Francisco for delivery to the addressees; that a copy of the letter hereunto attached and marked Exhibit "A" was enclosed in an envelope, postage prepaid, addressed to Rose Papantonio at 711 East 227th Street, New York City, N. Y., and was delivered to the Postmaster in San Francisco for delivery to said Rose Papantonio, together with envelopes containing copies of the same letter, addressed to the other stockholders.

That it was the custom of the Post Office at said time to return to said Transamerica Corporation all letters sent by Transamerica Corporation which, for any reason, were not delivered [232] to the ad-

dressees named therein; that some of the letters sent on December 8, 1931 were returned by the Postmaster by reason of his inability to deliver the same to the addressee named;

That the letter sent to Rose Papantonio on said December 8, 1931 was not among the letters which were returned by the Post Office;

That this affiant, previous to and since said 8th day of December, 1931, sent out dividend checks, notices and other communications to the stockholders of Transamerica Corporation, including said Rose Papantonio, at the above address; that the said notices, communications and dividends were all sent in the same manner as the aforesaid letter; that at no time has Transamerica Corporation ever received any notice from Rose Papantonio to the effect that any such mail has ever failed to reach her, and all dividend checks mailed to said Rose Papantonio during said time have been received, endorsed and cashed by her.

HECTOR CAMPANA.

Subscribed and sworn to before me, this 14th day of September, 1942.

[Seal] JOHN F. BURNS,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission Expires April 12, 1945. [233]

EXHIBIT "A"

Transamerica Corporation

San Francisco, California,

December 9, 1931

To the Stockholders of

Transamerica Corporation:

In connection with the enclosed letter to stockholders from the Board of Directors with reference to "Associated Transamerica Stockholders," and in view of the attack upon the policies of the present management by this group, your officers take this opportunity to communicate to all stockholders information which we have already given to some in answer to inquiries, and which we believe, will make it clear that stockholders, for their own good, should support the present Board of Directors which is responsible for the management of the Corporation.

I.

In its letter, your Board of Directors states again the reasons for adopting the policy of ultimately disposing of the shares of stock in the banks controlled by Transamerica, namely that it is essential to the complete success of a bank that it should be operated and publicly regarded as an independent institution without responsibility for, or connection with, any other business. In order that there may be no misunderstanding, we wish to emphasize, as previously announced, that no plan for disposing of Transamerica's holdings of stock of Bank of America N. T. & S. A. (California) will be adopted without a vote of the stockholders of Transamerica at a

meeting called for that purpose, nor will Transamerica stockholders be asked to vote on any plan until they have had an opportunity fully to inform themselves regarding it at the time of its submission. Pending the approval of any such plan, the Corporation will not dispose of any of its holdings in the stock of that Bank.

II.

In the recent communication from "Associated Transamerica Stockholders," reference is made to salaries and compensation of officers. It is proper to state the following for the information of stockholders:

(1) The present officers of the Corporation and its subsidiaries are receiving and have received during the period of the present administration only normal salaries, commensurate with the duties and responsibilities of their respective offices.

(2) The only record of extraordinary compensation relates to Mr. A. P. Giannini, although he allowed the impression to be created that he worked for little or no compensation. In 1927, the Board of Directors of Bancitaly Corporation, predecessor of Transamerica, adopted a resolution approving the payment to Mr. Giannini, as President of Bancitaly Corporation, of 5% of the profits each year. This arrangement was not continued after the formation of Transamerica Corporation, but presumably based upon his claim to such a percentage of the profits of Bancitaly Corporation, there was placed to Mr. Giannini's credit from the cash funds of Bancitaly Corporation or subsidiaries of Transamerica, dur-

ing the three year period 1927-1930 no less than Three million seven hundred thousand dollars (\$3,700,000). This sum does not include the One million five hundred thousand dollars (\$1,500,000) given at Mr. Giannini's request by Bancitaly Corporation to the University of California to establish the Giannini Foundation and for the building of Giannini Hall, making Five million two hundred thousand dollars (\$5,200,000) in all. Of said Three million seven hundred thousand dollars (\$3,700,000), Two million four hundred thousand dollars (\$2,400,000) was placed to his credit between December 30, 1929 and January 21, 1930, after the stock market crash and immediately before his retirement from active service with the Corporation. All of said Three million seven hundred thousand dollars (\$3,700,000) has been withdrawn by, or paid upon the order of, Mr. A. P. Giannini, except an unpaid balance of Seven hundred ninety-two thousand dollars (\$792,000) which in September of this year Mr. Giannini demanded and which the present Board of Directors, on the advice of counsel, has refused to pay. The Board has sought the advice of eminent counsel, regarding the legality of the payments made to Mr. Giannini. [234]

III.

The recent communication of "Associated Trans-america Stockholders" refers to the right stockholders to full information regarding the affairs of their Corporation. It will be remembered that during Mr. A. P. Giannini's administration, when he

held seven-year proxies from holders of a majority of the stock, stockholders were furnished with only the most meager reports which did not explain the Corporation's financial position. The management which succeeded Mr. Giannini determined to change these methods. One of their first acts was to employ Messrs. Ernst & Ernst, certified public accountants, to make a thorough study of the Corporation's affairs. After receiving the report of these accountants, the Board of Directors issued to stockholders their full statement dated July 12, 1930, which was the first official statement adequate to enable stockholders to form their own opinions as to the value of their property. At the same period the Board of Directors caused the shares of the Corporation to be listed on the New York Stock Exchange, with whom they entered into an agreement to publish audited annual statements to stockholders.

IV.

The spokesman for the "Associated Transamerica Stockholders" calls attention to the decline in the market value of Transamerica stock which had progressed far during Mr. Giannini's regime and has continued during the administration of the present management. Some of the causes of this decline are as follows:

(1) The decline followed the nation-wide decline of security prices and especially of the shares of investment companies.

(2) The absence of accurate information regarding the Corporation during the former administra-

tion resulted in surrounding the stock with mystery which doubtless contributed to its rise during the years of generally rising prices, but operated in contrary fashion to bring down the price of the stock when the market turned.

(3) The fact that when the entire market began to decline at the end of October, 1929, the Corporation under Mr. Giannini's direction maintained Transamerica at a high and artificial level from which it fell rapidly when the support was removed. During the four weeks ending October 28, 1929, over \$68,000,000 was expended by the Corporation in the purchase, on balance, of over 1,090,000 shares of Transamerica stock at an average cost of over \$62.50 per share. This policy of attempting to hold the price of Transamerica stock, when the prices of all other securities were dropping rapidly left the corporation at the end of 1929 with a serious reduction in quick assets and with large indebtedness. Another result of that artificial and costly attempt of Transamerica to peg the market value of its own stock was to give speculators and market operators an opportunity of selling their stock to the Corporation at high prices, while loyal stockholders, uninformed of the situation, suffered great losses. Those who sold during this period profited, while those who remained loyal shared in the loss to the Corporation resulting from the purchases of Transamerica stock. Following the stock market crash in the fall of 1929, the Corporation faced a difficult future. It was at this point that Mr. Giannini retired.

V.

The charge that the fall in the value of Trans-america stock is due to manipulation and sales by persons associated with the present management is not true. Your Chairman wishes to point out to stockholders that since he became your chief executive officer he has been the largest holder of Trans-america stock and that he has never sold a single share of his holdings or in any way speculated in the stock, directly or indirectly.

VI.

The "Associated Transamerica Stockholders" refer to the dividend policy during Mr. Giannini's regime and the reduction and later the suspension of dividends, which occurred prior to the election of the present Board. The dividend policy during Mr. Giannini's regime was made possible by the appreciation in securities generally during an exceptional period of rising prices. Such dividend policy was bound to end upon the advent of the period of rapidly declining prices which began in the fall of 1929 and has continued until the present time. Mr. Giannini's retirement coincided with the beginning of the period of declining prices, since which time the principal source, and indeed almost the only source, of income for dividends has been the current income of the Corporation's investments. Your Board's decision to interrupt the payment of dividends was a wise and necessary measure to conserve the Corporation's cash resources in order to provide for the reduction of the Corporation's large floating

debt, chiefly caused, as pointed out above, by the large purchases of Transamerica shares at high prices during Mr. Giannini's regime. [235]

VII.

The suggestion that your Board of Directors is disposing of the Corporation's assets unwisely is incorrect. The merger of The Bank of America N. A. (New York) with The National City Bank of New York, which has recently been consummated by virtue of an overwhelming vote of the shareholders of both banks, is most beneficial to Transamerica stockholders. As a result of this merger, Transamerica now owns, in place of 63% of the stock of The Bank of America N. A. (New York), a very substantial interest in The National City Bank, one of the largest banks of the world. This merger should materially increase the value of this investment. Based on relative dividends currently paid at the time of the merger it will result in a material increase in the income from this investment.

VIII.

It is true, as stated by the "Associated Transamerica Stockholders," that the asset values given in the circular of the present Board under date of September 22 differ from the book values published two years earlier. The change is due to the fact that the Corporation's investments in controlled banks and other subsidiaries had been previously carried at the cost thereof at a time when prices were materially higher than today, while the revised

statement on which the letter of September 22 was based, gives the net asset value of the subsidiaries regardless of their cost and after eliminating all value for good will and providing substantial reserves. The latest statement was made in this form in order that stockholders might have reliable and unvarnished information regarding the net asset value of their investment.

IX.

The Board of Directors aims to improve the condition of the properties in their charge and to place the enterprise on a sound and conservative basis. Definite progress has already been made in that direction which should make possible the resumption of dividends as soon as general conditions will permit.

Stockholders are earnestly urged, in their own interest, to support the present Board of Directors of the Corporation, and to sign and return the enclosed proxy, without delay, in the enclosed envelope.

If, after reading this letter, you have any doubt as to what action you should take, you are urged, in your own interest, to consult any bank or banker of standing in your community.

Yours sincerely,

ELISHA WALKER

JAMES A. BACIGALUPI [236]

Affidavit of Service by Mailing

State of California,

County of Los Angeles—ss.

Leroy J. Mack, being first duly sworn, deposes and says: I am now and at all times herein mentioned was a citizen of the United States of America and a resident of the County of Los Angeles, State of California, over the age of eighteen years and not a party to or interested in the above entitled action. My business address where I am employed is 650 South Spring Street, Los Angeles, California. On the 15th day of September, 1942, I personally served the foregoing and attached Motions and Notice of Motion on Vincent Anthony Marco, Homer N Boardman and Percy V. Clibborn, the attorneys for the plaintiff in said action, by enclosing a true copy thereof in a sealed envelope addressed to said attorneys at their business address at 9730 Wilshire Boulevard, Beverly Hills, California, and by depositing said sealed envelope containing said enclosure, with the postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, between which said place of mailing and the place so addressed there is regular daily communication by and delivery of United States mail.

LEROY J. MACK

Subscribed and sworn to before me this 15th day of September, 1942.

[Seal]

CLARA KLEINMAN,

Notary Public in and for said County and State.

[Endorsed]: Filed Sep. 15, 1942. [237]

[Title of District Court and Cause.]

MOTIONS BY DEFENDANTS, CHARLES de Y. ELKUS, AND CHARLES de Y. ELKUS, WILLIAM S. HOELSCHER, CLIFFORD P. HOFFMAN, C. J. SMITH, VERNON C. WALSTON AND CLAIRE GIANNINI HOFFMAN, TRANSACTING BUSINESS AS CO-PARTNERS UNDER THE FIRM NAME AND STYLE OF WALSTON & CO., AND WALSTON & CO., A CO-PARTNERSHIP, JOINTLY AND SEVERALLY:

- (1) TO DISMISS THE ACTION.
- (2) FOR STATEMENT IN SEPARATE COUNTS OF VARIOUS ALLEGED CAUSES OF ACTION.
- (3) FOR A MORE DEFINITE STATEMENT AND BILL OF PARTICULARS. [238]

Defendants, Charles de Y. Elkus, and Charles de Y. Elkus, William S. Hoelscher, Clifford P. Hoffman, C. J. Smith, Vernon C. Walston and Claire Giannini Hoffman, transacting business as co-partners under the firm name and style of Walston & Co., and Walston & Co., a co-partnership, (hereinafter referred to as "moving defendants") jointly and severally move the court as follows:

I. MOTION TO DISMISS

To dismiss the above entitled action as against the moving defendants and each of them, on the following grounds:

(1) That said second amended complaint fails to state a claim against the moving defendants or any of them upon which relief can be granted, for the reason that the alleged claims set forth therein against said moving defendants, jointly and severally, are barred by the provisions of Section 338(4), Section 339(1) and Section 343 of the Code of Civil Procedure of the State of California.

(2) That said second amended complaint fails to state a cause of action against the moving defendants or any of them upon which relief can be granted, for the reason that the alleged claims set forth therein against said moving defendants, jointly and severally, are barred by laches of plaintiff in delaying unduly the institution of this suit to the prejudice of the moving defendants and each of them.

(3) That there is a failure to set forth with particularity sufficient excuse for plaintiff's admitted failure to endeavor to have the board of directors of Transamerica Corporation bring this action.

(4) That there is a failure to allege an effort by plaintiff to obtain action by the stockholders of Transamerica Corporation or any sufficient excuse for not doing so.

(5) That various claims are asserted in said second amen- [239] ded complaint founded upon separate and different transactions and occurrences without being stated in separate counts, as required by Rule 10(b) of the Rules of Civil Procedure for the District Courts of the United States and con-

trary to the directions and order of the above entitled court upon the hearing of the motions previously addressed to the first amended complaint herein.

II. MOTION FOR STATEMENT IN SEPARATE COUNTS OF VARIOUS ALLEGED CAUSES OF ACTION.

In the alternative, and without prejudice to the foregoing motion to dismiss, for an order requiring plaintiff to state in separate counts the various claims founded upon the following separate transactions and occurrences:

(a) The claim alleged in Paragraphs XXVI to XXIX, both inclusive, of said second amended complaint pertaining to the assumption by Transamerica Corporation of the salary agreement between A. P. Giannini and Bancitaly Corporation, together with certain alleged fictitious credit entries made pursuant thereto and the subsequent entry of fictitious credits by Transamerica Corporation pursuant to said salary agreement and payments made by said corporation in accordance with said entries.

(b) The claim alleged in Paragraphs XXX to XXXIII, both inclusive, of said second amended complaint pertaining to the creation of the firm of Walston & Co., and the alleged diversion of funds and security business of Transamerica Corporation to Walston & Co.

(c) The claim alleged in Paragraphs XXXIV to XXXVI, both inclusive, pertaining to the payment of funds by Transamerica Corporation and

its subsidiaries, departments and instrumentalities, to the defendants to enable the latter to acquire the [240] controlling interest in Bankitaly Mortgage Company, and for capital of the latter corporation, and pertaining to the profits allegedly made by said corporation in speculative transactions in Transamerica stock, which profits allegedly were paid to and received by defendants.

(d) The claim alleged in Paragraphs XXXVII and XXXVIII of said second amended complaint pertaining to the alleged transfer of funds by Transamerica Corporation, and its subsidiaries, departments and instrumentalities, to the Smith-Mallory syndicate for speculative transactions in the stock of Transamerica, which transactions allegedly resulted in a profit that was paid to and received by defendants.

(e) The claim alleged in Paragraph XXXIX of said second amended complaint, in which it is alleged that defendants caused Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities to manipulate the market in Transamerica stock, and to incur large items of expense and suffer substantial losses in connection therewith.

This motion is made upon the ground that the second amended complaint contains five claims founded on five separate transactions and occurrences, without stating them in separate counts, as required by Rule 10(b) and as directed by the court at the time that plaintiff was ordered to file an amended complaint herein; that the various claims

are founded upon different and distinct theories and facts, and that the defenses of the various defendants can best and more properly be urged if the aforesaid claims are separately stated; that this is particularly true with reference to the defense of the statute of limitations and laches, which must be considered separately according to the particular type of claim involved and the facts and circumstances relative thereto, especially as to the sufficiency of the allegations of Paragraph XLI, in which plaintiff purports to explain and excuse her failure to discover the alleged frauds and to institute this action at an earlier date.

III. MOTION FOR A MORE DEFINITE STATEMENT OF A BILL OF PARTICULARS

In the alternative, and without prejudice to the preceding motion to dismiss, for an order requiring plaintiff to make a more definite statement of or bill of particulars in respect to the following matters, as to each of which the moving defendants desire more definite particulars and as to which said second amended complaint is defective:

(1) What was the total amount of issued and outstanding shares of capital stock of Trans-america on the date of commencement of this action, as contrasted with the fifty-seven shares owned by the plaintiff, as set forth in Paragraph III of the second amended complaint.

(2) What are the "various private, personal and individual business enterprises" referred to in

lines 8 and 9, page 9 of said second amended complaint.

(3) What “fraudulent, fictitious and pretended contracts and agreements” are referred to in lines 15 and 16, page 9, of said second amended complaint.

(4) What “other corporations, associations and copartnerships” are referred to in line 17, page 10, of said second amended complaint.

(5) How or in what manner the defendants procured, obtained, had, held and exercised full, complete and exclusive control of all of the issued and outstanding voting shares of capital stock of defendant Transamerica Corporation, as alleged in Paragraph XXI, page 12, lines 14 to 19, of said second amended complaint; [242] what was the period of time during which said shares were held, and whether such control included the fifty-seven shares alleged to be owned by the plaintiff, whether such control was through proxies or stock ownership, and if through proxies, the period of time during which said proxies were held, and by whom.

(6) In what manner and to what extent did the moving defendants, or any of them, procure, have and exercise control of the issued and outstanding voting shares of capital stock of Transamerica Corporation at the respective times mentioned in said second amended complaint, and what number of shares, if any, were owned by said moving defendants, respectively, during the various times mentioned in said second amended complaint.

(7) Who were the directors who were not members of the alleged conspiracy, and who were not

puppet and dummy directors, who discovered the matters complained or in said second amended complaint and failed to take action to redress or prevent the continuance of said wrong, as alleged in Paragraph XXV, page 17, lines 15 to 24, of said second amended complaint, and whether said members of the board of directors constituted a majority thereof, and the times during which they were directors.

(8) By what means and to what extent did the moving defendants, or each or any of them, cause to be done the acts referred to in Paragraphs XXVI, XXVII, XXVIII, XXIX, XXXI, XXXII, XXXIII, XXXV, XXXVI, XXXVII, XXXIX, XL and XLI.

(9) Wherein the liability of said Bancitaly Corporation, as evidenced by said salary agreement, was pretended, fraudulent and fictitious, as alleged in Paragraph XXVI, page 18, lines 1 and 2, of said second amended complaint, and whether, at the time of the assumption of said contract by Transamerica Corporation on the 25th day of May, 1929, as alleged in Paragraph XXVI [243] of said second amended complaint, or thereafter the moving defendants, or any of them, knew that said contract was fictitious, void or fraudulent.

(10) To what extent were the credit entries referred to in Paragraph XXVII, page 20, lines 7 to 28, of said second amended complaint, in excess of the actual and true net profits of Bancitaly Corporation or Transamerica Corporation.

(11) Wherein were the entries made by Trans-

america Corporation and its subsidiaries with regard to said contract of employment, as alleged in Paragraph XXVII, page 19, line 19, to page 20, line 6, "purported, false, fraudulent and fictitious."

(12) Wherein did the amount credited to Amadeo P. Giannini, L. M. Giannini and Virgil Giannini, not truly and correctly represent five per cent of the actual and true net profits of said corporation and its corporate subsidiaries for said period, as alleged in Paragraph XXVII, lines 7 to 17, of said second amended complaint, and wherein was the said salary computed upon false, fictitious, unearned and unrealized profits, and to what extent was it so computed, as alleged in Paragraph XXVII, page 20, lines 17 to 20.

(13) In what respect was the payment of \$3,700,000.00 made to A. P. Giannini and others, as alleged in Paragraph XXVIII, page 20, line 30, to page 21, line 19, without legal right or authority; to what extent, if any, did the said amount exceed 5% of the actual and true net profits of Transamerica Corporation, and wherein were the defendants A. P. Giannini, L. M. Giannini and Virgil Giannini unjustly enriched in the sum of \$3,700,000.00, as alleged in Paragraph XXVIII of said second amended complaint, page 21, line 29, to page 22, line 15.

(14) Wherein the records and books of account kept and maintained by Transamerica Corporation were manipulated by an [244] involved, intricate and complex system of accounting, as alleged in Paragraph XXIX, page 22, lines 24 to 27, of said second amended complaint, and how the said system

of accounting was in conflict with the usual, customary and proper and recognized principles of the science of accounting, and what were the false, misleading, untrue and fictitious names and designations under which payments and disbursements to defendant A. P. Giannini, as alleged in said Paragraph XXIX, page 23, lines 3 to 8, were covered, disguised and concealed.

(15) How and to what extent did the moving defendants, or any of them, intend to enrich themselves by reason of the credits in favor of A. P. Giannini, L. M. Giannini and Virgil D. Giannini, as alleged in Paragraph XXVI of said second amended complaint.

(16) How and to what extent did the moving defendants, or any of them, intend to enrich themselves by reason of the credits in favor of A. P. Giannini, L. M. Giannini and Virgil D. Giannini, as alleged in Paragraph XXVII of said second amended complaint.

(17) How and to what extent, respectively, were the moving defendants, and each or any of them, benefited and enriched by reason of the payments made to A. P. Giannini, L. M. Giannini and V. D. Giannini, as alleged in Paragraph XXVIII of said second amended complaint.

(18) What specific sums were paid to and received and accepted by the respective moving defendants, or any of them, out of the total sum of \$300,000.00, as alleged in Paragraph XXXVIII of the said second amended complaint.

(19) How and in what respective sums were

the moving defendants, or any or each of them, benefited by the expenses paid and losses suffered by Transamerica Corporation, as alleged in [245] Paragraph XXXIX of said second amended complaint.

(20) How and to what extent were the moving defendants, exclusive of Claire G. Hoffman, benefited or enriched by the disbursement of \$548,000.00 to A. P. Giannini, L. M. Giannini, Claire G. Hoffman and Virgil D. Giannini, as alleged in Paragraph XXXII of said second amended complaint.

(21) What specific amounts were paid or advanced by Transamerica Corporation or its subsidiaries, departments and instrumentalities to the respective moving defendants, or any or each of them, as alleged in Paragraph XXXV of said second amended complaint.

(22) What number of shares of stock of Bank-italy Mortgage Company, if any, were acquired by the respective moving defendants, or any or each of them, as alleged in Paragraph XXXV of said second amended complaint.

(23) What specific sums were paid to and received and accepted by the respective moving defendants, or any or each of them, out of the sum of \$2,000,000.00, as alleged in Paragraph XXXVI of said second amended complaint.

The foregoing motion will be made upon the ground that the second amended complaint lacks definiteness in the particulars specified, and is defective in that respect, and that the information desired by the moving defendants is necessary to

enable them to properly prepare their responsive pleading and to prepare for trial.

BACIGALUPI, ELKUS &
SALINGER

CLAUDE N. ROSENBERG

By CLAUDE N. ROSENBERG

Attorneys for defendants, Charles de Y. Elkus, and Charles de Y. Elkus, William S. Hoelscher, Clifford P. Hoffman, C. J. Smith, Vernon C. Walston and Claire Giannini Hoffman, transacting business as co-partners under the firm name and style of Walston & Co., and Walston & Co., a co-partnership, jointly and severally.

Address of said attorneys is:

300 Montgomery Street

San Francisco, California. [246]

NOTICE OF MOTION

To Vincent A. Marco, Esq., Percy V. Clibborn, Esq., Homer N. Boardman, Esq., and Joseph A. Rus-
kay, Esq., attorneys for plaintiff:

Please take notice, that the undersigned will bring the above motion on for hearing before this Court Honorable Harry A. Hollzer, District Judge, at Court Room No. 2, Post Office and Federal Courts Building, City of Los Angeles, California, on the 1st day of October, 1942, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

You will further take notice, that all of said motions will be made upon the files and records herein, including the second amended complaint, said motions and this notice.

Please take further notice, that defendants, Charles de Y. Elkus, and Charles de Y. Elkus, William S. Hoelscher, Clifford P. Hoffman, C. J. Smith, Vernon C. Walston and Claire Giannini Hoffman, transacting business as co-partners under the firm name and style of Walston & Co., and Walston & Co., a co-partnership, will, jointly and severally, rely upon points and authorities in support of said motions, a copy of which is herewith served upon you.

BACIGALUPI, ELKUS &
SALINGER

CLAUDE N. ROSENBERG,
By CLAUDE N. ROSENBERG :

Attorney for Defendants, Charles de Y. Elkus, and Charles de Y. Elkus, William S. Hoelscher, Clifford P. Hoffman, C. J. Smith, Vernon C. Walston and Claire Giannini Hoffman, transacting business as co-partners under the firm name and style of Walston & Co., and Walston & Co., a co-partnership, jointly and severally.
300 Montgomery Street,
San Francisco, California. [247]

State of California,
City and County of San Francisco—ss.

F. M. Hoff, being first duly sworn, deposes and says:

That she is now and at all times herein mentioned was a citizen of the United States of America; that she is over the age of eighteen years and not a party to or in any way interested in the above en-

titled matter; that at all of said times she was and still is employed in the office of Bacigalupi, Elkus & Salinger, San Francisco, California; that on the 14th day of September, 1942, deponent served a copy the foregoing Motions in the above entitled matter upon the following named persons in the following manner, to-wit:

Vincent Anthony Marco, Esq.

Homer N. Boardman, Esq.

Percy V. Clibborn, Esq.

9730 Wilshire Boulevard

Beverly Hills, California

Deponent enclosed a copy of said Motions in an envelope addressed as above set forth, sealed the same and deposited it on the said date, so sealed and addressed, with the said enclosure, and with the postage thereon fully prepaid, in the United States Post Office in the City and County of San Francisco, State of California; that there is regular communication by United States Mail between the place of mailing and the place so addressed, and that there is delivery service by United States mail at the place so addressed.

F. M. HOFF

Subscribed and sworn to before me this 14th day of September, 1942.

[Seal] JOHN F. BURNS

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Sept. 15, 1942. [248]

[Title of District Court and Cause.]

MOTIONS BY DEFENDANT
HERBERT E. WHITE

- I. TO DISMISS THE ACTION.
- II. TO SEPARATELY STATE THE SEVERAL CAUSES OF ACTION IN SEPARATE COUNTS, SAID MOTION BEING WITHOUT PREJUDICE TO MOTIONS TO DISMISS AND TO STRIKE.
- III. FOR A MORE DEFINITE STATEMENT AND BILL OF PARTICULARS.
- IV. TO STRIKE OUT THE ENTIRE SECOND AMENDED COMPLAINT.
- V. TO STRIKE OUT CERTAIN DESIGNATED PORTIONS OF THE SECOND AMENDED COMPLAINT.

Defendant Herbert E. White moves the Court as follows:

MOTION TO DISMISS

1. To dismiss the action: [249]
 - (a) Because the Second Amended Complaint fails to state a claim against defendant upon which relief can be granted.
 - (b) Because the alleged claim set forth in said Second Amended Complaint against defendant is barred by the provisions of Section 338, subdivision 4, and Section 339, subdivision 1, of the Code of Civil Procedure of the State of California.
 - (c) Because the alleged claim set forth in said

Second Amended Complaint is barred by the laches of plaintiff in failing to use diligence in the prosecution of said claim and by the long delay in making this defendant a party to this action, which lack of diligence and delay have been highly prejudicial to this defendant.

(d) Because there is a failure to include indispensable parties defendant as parties to the action, to-wit, the subsidiaries of defendant Trans-America Corporation which are alleged to have suffered injury and detriment by the acts complained of.

(e) Because the court lacks jurisdiction and the Second Amended Complaint fails to state a claim against defendant upon which relief can be granted, for the reason that the Second Amended Complaint sets forth certain injury and damage to the subsidiaries of Transamerica Corporation and fails to allege that plaintiff was a stockholder of such subsidiaries, or any of them.

(f) Because the complaint consists entirely of sham, irrelevant, redundant and evasive allegations, and is not in compliance with the directions of the above Court in granting to plaintiff permission to file a Second Amended Complaint, and fails to set forth the undisputed facts that on December 9, 1931, the stockholders of Transamerica Corporation, including plaintiff, were sent a letter advising them that A. P. Giannini had received for his compensation the credits referred to in the Second Amended Complaint, and had withdrawn all but \$792,000.00 thereof, and that the Board of Directors of Trans-

america upon advice of counsel had [250] refused to pay defendant A. P. Giannini said balance, and that plaintiff had notice that thereafter, in February, 1932, A. P. Giannini was re-elected a director and officer of said corporation.

(g) Because plaintiff has entirely disregarded the directions of this Court at the time of the hearing of the motions herein directed at the First Amended Complaint with regard to setting up her causes of action in separate counts.

MOTION FOR AN ORDER REQUIRING
PLAINTIFF TO SEPARATELY STATE
CAUSES OF ACTION IN SEPARATE
COUNTS

II. For an order requiring plaintiff to state in separate counts the claims founded upon the following separate transactions:

First: The transaction, the gist of which appears in paragraphs XXVI to XXIX inclusive, and in which it is alleged, defendants Amadeo P. Giannini and L. M. Giannini, and Virgil D. Giannini, deceased, were unjustly enriched to the serious and irremediable injury of defendant Transamerica and its corporate subsidiaries, departments, instrumentalities and shareholders, to the extent of at least \$3,700,000.00, alleged to have been paid to said defendants on account of a salary agreement made between one Bancitaly Corporation and defendant Amadeo P. Giannini between April, 1929, and January, 1939.

Second: The transaction, the gist of which appears in paragraphs XXX to XXXIII, inclusive, and in which it is alleged, defendant Walston & Co. and its individual members were unjustly enriched in the years 1933 to 1938, inclusive, from the funds, moneys, assets and properties of defendant Transamerica Corporation and its corporate subsidiaries, departments and instrumentalities, to the serious injury and detriment of Transamerica, its subsidiaries, departments and instrumentalities and shareholders in the sum and amount and to the extent of at least approximately \$548,000.00.

Third: The transaction, the gist of which appears in [251] paragraphs XXXIV to XXXVI inclusive, in respect to which it is alleged that during the year 1932 the sum of approximately \$1,500,000.00 was advanced by Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, for the purpose of the acquisition of Bankitaly Mortgage Company, and to said Bankitaly Mortgage Company the further sum of \$1,500,000.00 for use as capital, and that said Bankitaly Mortgage Company, later Pacific Coast Mortgage Company, indulged in certain speculative transactions which resulted in a profit of \$2,000,000.00 in the years of 1933 to 1938, inclusive, by reason of which defendants were unjustly enriched to the serious and irremediable injury and detriment of defendant Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders in the amount of \$2,000,000.00.

Fourth: The transaction, the gist of which ap-

pears in paragraphs XXXVII and XXXVIII, in which it is alleged that Transamerica, its corporate subsidiaries, departments and instrumentalities, advanced to Charles J. Smith and Margaret Mallory, trustees, the sum of \$3,000,000.00 for speculative operations in the capital stock of Transamerica Corporation and in other stocks and securities, which transactions resulted in the years 1933 to 1936, inclusive, in a profit to said trust of \$300,000.00, and that defendants were unjustly enriched to the serious and irremediable injury and detriment of defendant Transamerica Corporation and its corporate subsidiaries, departments, instrumentalities and shareholders in the amount of \$300,000.00.

Fifth: The transaction, the gist of which appears in paragraph XXXIX, in which it is alleged that in the years 1932 to 1937, inclusive, defendants caused Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, to incur items of expense aggregating \$2,250,000.00 and suffer losses in "stirring" and manipulating the market for stock of Transamerica [252] Corporation, to the serious and irremediable injury and detriment of defendant Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders, in the amount of \$2,250,000.00.

This motion is made without prejudice to the motion heretofore made to dismiss the action, based upon the same ground, and the motion hereinafter made to strike the complaint from the files on the same ground.

This motion is made upon the ground that the Second Amended Complaint unites and does not state in separate counts the several alleged claims founded upon separate alleged transactions or occurrences, in violation of the provisions of paragraph (b) of Rule 10 of the Federal Rules of Civil Procedure, and in violation of the directions of this Court, given at the time permission was granted to the plaintiff to file an amended bill; that the defendants involved in the first alleged transaction are not the same as the defendants involved in the second, third, *four* or fifth transaction; that the defendants involved in the second, third, fourth and fifth transactions are different; that the plaintiff's alleged right to recover in behalf of Transamerica Corporation is based upon separate and distinct theories respecting each of said five alleged transactions; that plaintiff's alleged right to recover in behalf of Transamerica is based upon separate and distinct allegations with reference to each of said five alleged transactions; that said five alleged transactions are alleged to have occurred during different times, and the officers and directors of Transamerica Corporation during the time of said alleged respective transactions were different; that a statement in separate counts of said five transactions will facilitate the clear presentation of the special defenses thereto of this defendant, Herbert E. White, and that said separate statement is necessary in order to permit this defendant to assert his defense to said action. [253]

MOTION FOR A MORE DEFINITE STATEMENT OR FOR A BILL OF PARTICULARS

III. For an order requiring plaintiff to make a more definite statement of or a bill of particulars in respect to the following matters, as to each of which defendant desires more definite particulars and in respect to each of which the second amended complaint is defective:

1. Which of the corporations referred to in paragraph XXVI and elsewhere in said second amended complaint as "said corporation and its corporate subsidiaries, departments and instrumentalities" or by language of similar import (hereinafter in this motion referred to as "said corporations"), and if more than one to what extent each, was caused to acquire and absorb all of the capital stock of Bancitaly Corporation as alleged in [254] paragraph XXVI of said second amended complaint (p. 17, line 26 to p. 18, line 1).

2. How and by what means was said transaction accomplished.

3. Which of said corporations, and if more than one, to what extent each, was caused to acquire and absorb all of the assets of Bancitaly Corporation, as alleged in said paragraph XXVI (p. 17, line 26 to p. 18, line 1).

4. Which of said corporations, and if more than one to what extent each, was caused to appear to assume as its own obligations the alleged pretended, fraudulent and fictitious liabilities of said Bancitaly Corporation, as alleged in said paragraph XXVI (p. 17, line 26 to p. 18, line 17).

5. Which of said corporations, and if more than one to what extent each, was caused to make and enter certain purported false, fraudulent and fictitious credit entries, and upon the books of which of said corporations were said entries made, as alleged in paragraph XXVII (p. 19, line 19 to p. 20, line 6).

6. Which of said corporations, and if more than one, to what extent each, was caused to pay to defendants Amadeo P. Giannini and L. M. Giannini, and Virgil D. Giannini, now deceased, sums as alleged in paragraph XXVIII of said second amended complaint (p. 20, line 30 to p. 21, line 29).

7. From the funds and assets of which of said corporations, and if more than one, the extent as to each, were defendants Amadeo P. Giannini and L. M. Giannini, and Virgil D. Giannin, now deceased, unjustly enriched, and which of said corporations, and if more than one to what extent each, thereby suffered serious and irremediable injury and detriment, as alleged in paragraph XXVIII (p. 21, line 30 to p. 22, line 15).

8. Upon the books of which of said corporation, and if more than one, to what extent each, were the transactions [255] complained of in paragraphs XXVI, XXVII and XXVIII concealed, as alleged in paragraph XXIX of said Second Amended Complaint (par. XXIX, p. 22, line 7 to p. 23, line 8).

9. Which of said corporations, and if more than one, to what extent each, was actively engaged in a profitable brokerage business when defendant Walston & Co. was formed, as alleged in paragraph

XXX of said second amended complaint (p. 23, lines 10-29).

10. Which of said corporations' brokerage business, and if more than one, to what extent the brokerage business of each, was diverted to Walston & Co., as alleged in paragraph XXXI of said second amended complaint (p. 23, line 31 to p. 24, line 19).

11. Which of said corporations, and if more than one, to what extent each, was caused from time to time to disburse its funds and assets to Walston & Co., as alleged in paragraph XXXII of said second amended complaint (p. 24, line 21 to p. 25, line 25).

12. To which of said corporations did the business alleged to have been diverted to Walston & Co. belong, and if more than one, the extent as to each, as alleged in paragraph XXXII (p. 24, line 21 to p. 25, line 25).

13. From the funds, money, assets and properties of which of said corporations, and if more than one, the extent as to each, were defendants unjustly enriched, as alleged in said paragraph XXXII (p. 24, line 21 to p. 25, line 25).

14. Which of said corporations, and if more than one, to what extent each, was caused to pay and advance the sum of \$1,500,000.00, as alleged in paragraph XXXV of said second amended complaint (p. 26, line 29 to p. 27, line 25).

15. Which of said corporations, and if more than one, to what extent each, suffered the alleged detriment resulting from the payments and advances

alleged in paragraph XXXV of said second amended complaint (p. 27, line 26 to p. 28, line 4).

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16. To the extent that the same is not disclosed by the allegations of paragraph XXII and XXIII of said Second Amended Complaint, what position did each defendant and each of the persons referred to in paragraph XXXVI hold in said corporations, and if in more than one, the positions in each (p. 28, lines 18-41).

17. Which of said corporations, and if more than one to what extent each, suffered the serious and irremediable injury and detriment alleged in paragraph XXXVI (p. 29, lines 13-17).

18. Which of said corporations, and if more than one, to what extent each, was caused from time to time to pay and advance the sum of \$3,000.00 to the trustees mentioned in paragraph XXXVII of the second amended complaint, as alleged in said paragraph (p. 29, line 19 to p. 30, line 4).

19. To the extent that the same is not disclosed by the allegations of paragraphs XXII and XXIII of said second amended complaint, what official positions did the defendants and persons referred to in paragraph XXXVIII of said second amended complaint hold in said corporations, and if in more than one, the positions in each (p. 30, line 31 to p. 31, line 4).

20. Which of said corporations, and if more than one to what extent each, suffered the serious and irremediable injury and detriment alleged in said paragraph XXXVIII (p. 31, lines 16-20).

21. Which of said corporations, and if more than one, to what extent each, was caused to engage in the business of manipulating and steering the market for capital stock of defendant Transamerica Corporation and doing the other acts complained of in paragraph XXXIX of said second amended complaint, as alleged in said paragraph (p. 31, line 22 to p. 32, line 16), and which were injured thereby and to what extent.

22. Which of the items referred to in paragraph XL of said second amended complaint were disguised, camouflaged, [257] covered and concealed by entries on the books of which of said corporations, and if more than one, the extent as to each (p. 33, lines 11-15).

23. Has plaintiff at any time been the owner of shares of stock of any of the corporations alleged in paragraph II of the second amended complaint to be subsidiaries of defendant Transamerica Corporation, and if so, for what period did plaintiff own stock in each of said subsidiaries, and what was the number of shares of stock owned by plaintiff in each.

24. Upon what facts does plaintiff base her conclusion that an action to redress the alleged wrongs for which relief is sought in this action to be effective and complete must be directed against all of said defendants and persons named in the second amended complaint, as alleged in paragraph XLII thereof (p. 36, lines 24-26).

25. What facts constitute the basis of plaintiff's conclusion that a demand upon the Board of Di-

rectors of defendant Transamerica Corporation to bring this action would be and constitute a futile and idle act, as alleged in paragraph XLII of said second amended complaint (p. 36, lines 27-28).

26. How and by what methods and by what means have the defendants and persons referred to in paragraphs XXI and XLIII of said second amended complaint had and exercised complete and exclusive control of the voting shares of stock of defendant Transamerica Corporation, as alleged in said paragraphs of said second amended complaint (p. 12, lines 14-25, and p. 36, line 30 to p. 37, line 2, respectively); if by stock ownership, how many shares did they hold, what was the period of time during which shares were held, and whether such control included the 57 shares alleged to be owned by plaintiff, and if through proxies, the period during which said proxies were held and by whom.

27. Upon what facts does plaintiff base her [258] conclusion that any demand upon the stockholders to be effective would first require an expensive and prolonged struggle with said adverse Boards of Directors and persons to wrest control of all the voting shares of stock of defendant Transamerica Corporation from them, as alleged in paragraph XLIII (p. 37, lines 17-20).

28. Upon what facts does plaintiff base her conclusion that such a struggle would also be a futile and idle act, as alleged in paragraph XLIII (p. 37, lines 20-21).

29. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXVI, that the

matters complained of in said paragraph were “without legal right or authority” (p. 17, lines 28-29).

30. What facts constitute the basis of plaintiff’s conclusion appearing in said paragraph XXVI, that the salary agreement therein referred to was “pretended, fraudulent and fictitious” (p. 18, line 4).

31. What facts constitute the basis of plaintiff’s conclusion appearing in said paragraph XXVI, that the credit entries therein referred to were “pretended, fraudulent and fictitious” (p. 18, lines 11-12).

32. What facts constitute the basis of plaintiff’s conclusion appearing in said paragraph XXVI, that the profits of Bancitaly Corporation used as a basis of computation “were false, fictitious, unearned and unrealized” (p. 19, lines 9-13).

33. What facts constitute the basis of plaintiff’s conclusion appearing in paragraph XXVII, that the acts therein complained of were “without legal right or authority” (p. 19, lines 26-27).

34. What facts constitute the basis of plaintiff’s conclusion appearing in said paragraph XXVII, that the credit entries therein referred to were “purported, false, fraudulent and fictitious” (p. 19, line 29). [259]

35. What facts constitute the basis of plaintiff’s conclusion appearing in said paragraph XXVII, that the total credit and each item thereof “was and is false, fraudulent, fictitious and untrue” (p. 20, lines 13-14).

36. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVIII, that defendants Amadeo P. Giannini and L. M. Giannini, and Virgil D. Giannini, now deceased, were "unjustly enriched" by the payments in said paragraph referred to (p. 22, line 2).

37. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXVIII, that the alleged unjust enrichment was "to the serious and irremediable injury and detriment of said defendant corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders" (p. 22, lines 2-5).

38. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXIX, that the corporate transactions and acts therein referred to were "wholly and entirely concealed" (p. 23, line 8).

39. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXI, that the matters therein complained of were "without legal right or authority" (p. 24, line 4).

40. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXII, that the matters therein complained of were done "without legal right or authority" (p. 24, lines 23-24).

41. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXII, that the defendants therein referred to were "unjustly enriched" (p. 25, line 20).

42. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXII,

that said alleged [260] unjust enrichment was “to the serious and irremediable injury and detriment of said defendant, Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities” (p. 25, lines 20-23).

43. What facts constitute the basis of plaintiff’s conclusion appearing in paragraph XXXV, that the transaction therein complained of was “without legal right or authority” (p. 27, line 18).

44. What facts constitute the basis of plaintiff’s conclusion appearing in said paragraph XXV, that the loans and advances therein referred to were not “in the usual course of business” (p. 28, lines 9-10).

45. What facts constitute the basis of plaintiff’s conclusion appearing in paragraph XXXVI, that the defendants therein mentioned and each of them was “unjustly enriched” (p. 29, line 11).

46. What facts constitute the basis of plaintiff’s conclusion appearing in said paragraph XXXVI, that said alleged unjust enrichment was “to the serious and irremediable injury and detriment of defendant Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders” (p. 29, lines 13-16).

47. What facts constitute the basis of plaintiff’s conclusion appearing in paragraph XXXVII, that the matter therein complained of was “without legal right or authority” (p. 29, line 22; p. 30, line 24).

48. What facts constitute the basis of plaintiff’s conclusion appearing in paragraph XXXVIII, that

the defendants therein referred to were and each of them was "unjustly enriched" p. 31, line 16).

49. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXVIII, that said alleged [261] unjust enrichment was "to the serious and irremediable injury and detriment of the defendant, Transamerica Corporation, and its corporate subsidiaries, departments, instrumentalities and shareholders" (p. 31, lines 16-19).

50. What facts constitute the basis of plaintiff's conclusion appearing in paragraph XXXIX, that the matters in said paragraph complained of were done "without legal right or authority" (p. 31, line 30).

51. What facts constitute the basis of plaintiff's conclusion appearing in said paragraph XXXIX, that the said matters were "to the serious and irremediable injury and detriment of said defendant, Transamerica Corporation, its corporate subsidiaries, departments, instrumentalities and shareholders" (p. 32, lines 12-14).

52. Who called plaintiff's attention on April 27, 1939, to the proceeding pending before the Securities and Exchange Commission and the order of said Commission made therein on November 22, 1938, and released on November 25, 1938, as alleged in paragraph XLI of said second amended complaint (p. 34, line 7 to p. 35, line 5); what was the relationship of said informant to plaintiff, and how long had such informant held such relationship to plaintiff.

53. Why was plaintiff's attention not called to said order of November 22, 1938 earlier than April 27, 1939.

54. Why did plaintiff not learn of said order on November 25, 1938, when the same was released.

55. Whether as alleged in paragraph XIX, all the defendants and all the persons named in paragraph XXIII of said second amended complaint conspired and agreed one with the other as in paragraph XIX alleged, or whether some of them were not conspirators but mere puppets, or were neither conspirators nor puppets but merely failed to discover the alleged wrongs, or having [262] discovered the alleged wrongs failed to take action, as alleged in paragraphs XXIV and XXV of said second amended complaint.

56. Which of the defendants and persons mentioned in said second amended complaint were conspirators, which were puppets but not conspirators, which were neither conspirators nor puppets but failed to discover the alleged wrongful acts complained of, and which, being neither conspirators nor puppets, having discovered the alleged wrongful acts failed to take action, as alleged in paragraphs XIX, XXIV and XXV of the second amended complaint.

57. What facts constitute the basis of plaintiff's conclusion appearing in paragraph II of the second amended complaint, that Bank of America National Trust & Savings Association, a national banking association, and the other corporations thereafter named are or were departments and instrumentali-

ties of defendant Transamerica Corporation (p. 3, line 6 to p. 4, line 2).

58. During what periods of time was the capital stock of the corporations referred to in said paragraph II as "subsidiaries, departments and instrumentalities" of defendant Transamerica Corporation, owned by defendant Transamerica Corporation, and what proportion of the stock of each was so owned by Transamerica Corporation.

59. To the extent that the same is not disclosed in paragraphs II, XXXIV and XXXVI, of what state is each of said corporations a resident.

60. Whether all the directors named as defendants and John M. Grant conspired and confederated, as alleged in paragraph XIX (p. 7, lines 14-22), or whether some of them were not conspirators but mere puppets, as alleged in paragraph XXIV (p. 16, line 32 to p. 17 line 4), or were neither conspirators nor puppets but merely failed to discover the alleged wrongs, or having discovered the alleged wrongs failed to take action, as alleged in [263] paragraph XXV (p. 17, lines 15-24).

61. Which of the defendants and persons mentioned in said second amended complaint were conspirators, which were puppets but not conspirators, which were neither conspirators nor puppets but failed to discover the alleged wrongful acts complained of, and which, being neither conspirators nor puppets, having discovered the alleged wrongful acts failed to take action, as alleged in paragraphs XIX, XXIV and XXV of the Second Amended Complaint.

62. What was the total amount of issued and outstanding shares of capital stock of Transamerica on the date of the commencement of this action as contrasted with the 57 shares owned by plaintiff, as set forth in paragraph III of the Second Amended Complaint (p. 4, lines 4-9).

63. What were the pretended, fraudulent and fictitious liabilities of Bancitaly Corporation (other than the salary agreement) mentioned and referred to in paragraph XXVI of the Second Amended Complaint (p. 18, lines 1-3).

64. Whether at the time defendants and persons mentioned in said paragraph XXVI caused Transamerica, its subsidiaries, departments and instrumentalities, to appear to assume its own certain alleged pretended, fraudulent and fictitious liabilities of Bancitaly Corporation, including a certain alleged pretended, fraudulent and fictitious salary agreement, any of said defendants and persons knew that said salary agreement was pretended or fraudulent or fictitious and, if so, which of said defendants and persons had such knowledge.

65. To what extent were the credit entries referred to in paragraph XXVII (p. 20, lines 7-28) of said Second Amended Complaint in excess of the actual and true net profits of Bancitaly Corporation or Transamerica Corporation.

66. Wherein did the amount credited to Amadeo P. Giannini, L. M. Giannini and Virgil Giannini, not truly and correctly [264] represent five per cent of the actual and true net profits of said corporation and its corporate subsidiaries for said period,

as alleged in paragraph XXVII (p. 20, lines 7-17) of said second amended complaint, and wherein was the said salary computed upon false, fictitious, unearned and unrealized profits, and to what extent was it so computed, as alleged in paragraph XXVII (p. 20, lines 17-20).

67. To what extent, if any, did the amount of \$3,700,000.00 alleged to have been paid to defendant A. P. Giannini and others, alleged in paragraph XXVIII (p. 20, line 30 to p. 21, line 19), exceed 3% of the actual and true net profits of Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, as alleged in paragraph XXVII (p. 20, lines 7-28).

68. Wherein the records and books of account kept and maintained by Transamerica Corporation were manipulated by an involved, intricate and complex system of accounting, as alleged in paragraph XXIX (p. 22, lines 24-27) of said second amended complaint, and how the said system of accounting was in conflict with the usual, customary and proper and recognized principles of the science of accounting, and what were the false, misleading, untrue and fictitious names and designations under which payments and disbursements to defendant Amadeo P. Giannini, as alleged in said paragraph XXIX (p. 23, lines 3-8) were covered, disguised and concealed; and what was the knowledge and understanding of the plaintiff with respect to accounting.

69. How and in what manner was the transfer and use of corporate funds and assets of defendant

Transamerica Corporation, its corporate subsidiaries, departments and instrumentalities, disguised, camouflaged, covered and concealed on the books of Transamerica Corporation, its subsidiaries, departments and instrumentalities, and wherein were the records false, fictitious or misleading, as alleged in paragraph XL of said second amended [265] complaint (p. 33, lines 8-15).

The foregoing motion will be made upon the ground that the second amended complaint lacks definiteness in the particulars specified and is defective in that regard, and that the details desired by defendant are necessary to enable him properly to prepare his responsive pleadings and to prepare for trial.

MOTION TO STRIKE OUT THE ENTIRE SECOND AMENDED COMPLAINT

IV. For an order striking the entire second amended complaint from the files for all the reasons set forth in subdivisions (f) and (g) of the foregoing Motion to Dismiss.

MOTION TO STRIKE OUT DESIGNATED PORTIONS OF THE SECOND AMENDED COMPLAINT

V. In the alternative, and without prejudice to the foregoing motion to strike out the entire second amended complaint, for an order striking the following matters from the second amended complaint:

1. All of paragraphs XXVI, XXVII, and all the allegations of paragraph XXVIII to and in-

cluding line 27, page 21, of the second amended complaint, in which are set forth transactions by and with Bancitaly Corporation and showing payments made on salary or compensation to A. P. Giannini prior to the year 1938.

The foregoing motion will be made upon the ground that the matters above specified are redundant, immaterial and impertinent as to this defendant, and are barred by the statute of limitations of actions of the State of California, and by the laches of plaintiff.

TANNER, ODELL & TAFT,
By ROBERT A. ODELL

Attorneys for Defendant Herbert E. White. [266]

The address of said attorneys for Herbert E. White is:

1011 Van Nuys Building,
210 West Seventh Street,
Los Angeles, California.

NOTICE OF MOTION

To Vincent A. Marco, Esq., Percy V. Clibborn, Esq., Homer N. Boardman, Esq., and Joseph A. Ruskey, Esq., Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above motions on for hearing before this court (Honorable Harry A. Hollzer, District Judge), at court room No. 2, Post Office and Federal Courts Building, City of Los Angeles, California, on the 1st day of October, 1942, at 10:00 o'clock A. M.

of that day, or as soon thereafter as counsel can be heard.

You Will Further Take Notice that all of said motions will be made upon the files and records herein, including the Reporter's Transcript of the proceedings herein had on June 23, 24 and 25, 1942, said motions and this notice, and the affidavits relating respectively (1) to the delivery to counsel for plaintiff herein of a copy of the letter of December 9, 1931, more particularly described in paragraph (f) of the foregoing motion to Dismiss, and (2) to the mailing of said letter in December, 1931, which affidavits are annexed to the motions of defendants A. H. Giannini, et al., made in respect to the second amended complaint.

Please Take Further Notice That defendant Herbert E. White will rely upon Points and Authorities in support of said motions, a copy of which is herewith served upon you.

(Affidavit of Service by Mail.)

TANNER, ODELL & TAFT,
By ROBERT A. ODELL

Attorneys for Defendant Herbert E. White.

[Endorsed]: Filed Sep. 15, 1942. [267]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT TRANSAMERICA
CORPORATION, A CORPORATION

Comes now the defendant Transamerica Corporation, a corporation, appearing for itself alone and not on behalf of any other defendant or defendants herein, and filing this, its Answer to the Second Amended Complaint on file herein, defends on the following grounds:

First Defense

The Second Amended Complaint fails to state a claim against this answering defendant upon which relief can be granted.

Second Defense

The Second Amended Complaint fails to state a claim on behalf of this answering defendant upon which relief can be granted. [268]

Third Defense

The Second Amended Complaint fails to state a claim against any other defendant or defendants herein upon which relief can be granted to this answering defendant.

EDMUND NELSON

Attorney for Defendant Transamerica Corporation
Address: Room 410 Bank of America Building,
650 South Spring Street, Los Angeles, California.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed Sept. 15, 1942. [269]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 16th day of April in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Harry A. Hollzer, District Judge.

[Title of Cause.]

No. 1490-H Civil

ORDER GRANTING MOTIONS TO DISMISS

For the reasons set forth in the memorandum of conclusions this day filed, it is ordered that each and all of the motions filed on behalf of the respective defendants to dismiss the second amended complaint be granted. It is further ordered that on or before June 1, 1943, plaintiff may file application for leave to file a third amended complaint, provided that such application have attached thereto her proposed further amended pleading, and also be accompanied by a memorandum of supporting points and authorities, provided further that at least ten days notice shall be given of the hearing of such application. [271]

[Title of District Court and Cause.]

MEMORANDUM OF CONCLUSIONS

Judge Hollzer's Calendar.

The present case constitutes what is generally designated as a stockholder's derivative suit. Plaintiff is the owner of a small number of shares of the corporate defendant named Transamerica Corporation, hereinafter referred to as Transamerica. The number of defendants is quite large, totalling eighty-one in all. Of these forty-six are sued by their true names, one being designated in four different capacities, and two others being each sued in two different capacities. The remaining thirty-five defendants are designated under fictitious names.

The matters discussed herein arise upon several motions which various groups of defendants have interposed against the second amended complaint. Each group of defendants has filed a motion to dismiss, a motion to separately state causes of action in separate counts, a motion for a more definite statement or for a bill of particulars, and a motion to strike the entire complaint. In addition, certain of these defendants have filed a motion to strike out certain [272] designated portions of the complaint.

This second amended complaint was filed by leave of court, granted at the close of quite an extended oral argument upon substantially similar motions directed against a first amended complaint. A clearer understanding of the legal questions requiring determination will be afforded by referring to certain portions of the discussion which took place

during the aforementioned oral argument, when the first amended complaint was under attack. Upon that occasion, it was pointed out that in said earlier complaint plaintiff had set forth in one and the same count allegations to the effect that as the result of sundry separate and distinct transactions, frauds had been perpetrated against Transamerica. Respecting such former pleading it was argued that one of the transactions therein complained of was alleged to have arisen out of a certain salary contract entered into prior to the organization of Transamerica between one of the defendants and a previously formed corporation and was described as involving the fraudulent disbursement of the funds of such earlier corporation pursuant to the terms of said contract; that another of the transactions there attacked was described as involving a fraud whereby Transamerica had assumed the liabilities of said earlier corporation, including the obligations of said contract and pursuant to the terms thereof had fraudulently disbursed various sums out of its own funds to the same defendant during a period both antedating the organization of Transamerica and also extending during approximately the first year of its existence; that a third transaction there complained of was described as involving a fraud whereby during a still later period and under the terms of the last mentioned contract Transamerica had [273] improperly disbursed additional sums out of its own funds to the same defendant; that still a further transaction there complained of was described as involving a fraud whereby, during the

years 1932 to 1938 inclusive, three of the defendants together with another individual who had died prior to the commencement of this suit, and whose personal representative was included as a co-defendant, had caused a certain co-partnership to be organized, under the name of Walston & Co., which partnership had been composed of eight of the defendants together with said decedent—and whereby two of the aforementioned partner defendants had caused, and the co-defendant directors of Transamerica knowingly had permitted, Transamerica to divert all of the latter's security brokerage business to said co-partnership and to pay from its funds substantial sums as brokerage fees for services with respect to brokerage business so diverted and also to pay other substantial sums for use as capital for said co-partnership, all of which sums were divided among the aforementioned three defendants and said fourth person, since deceased; that yet another transaction there complained of was described as a fraud whereby two of the aforementioned defendants together with a third person since deceased, whose personal representative was included as a co-defendant, caused Transamerica to advance large sums of money to them, which sums had been used by them to acquire the controlling interest in the capital stock of a certain corporation and for the further purpose of enabling the latter corporation to engage in speculative stock operations, that such operations had been carried on during the years 1933 to 1936 inclusive, resulting in large [274] profits to said corporation and which profits were

paid to the aforementioned two defendants and said third person since deceased; that again still another transaction there complained of was described as a fraud whereby the aforementioned two defendants and said third person since deceased had organized a certain secret trust syndicate referred to as the Mallory and Smith Trust, that said two defendants had caused, and the co-defendant directors of Transamerica knowingly had permitted, Transamerica to advance large sums to said trust syndicate which had employed the same for speculative stock operations resulting in substantial profits, which in turn had been paid to two said defendants and said third person since deceased during the years 1933, 1934 and 1935; and that finally yet another transaction there complained of was described as a fraud whereby the aforementioned two defendants caused Transamerica to expend large sums of money in repayment of substantial losses and expenses incurred in connection with said speculative stock operations.

During the course of the aforementioned argument the court commented in part as follows:

“For example * * * I see no basis upon which any decision relative to the so-called contract, salary contract transaction, will have the slightest bearing in determining the legality or illegality of the so-called Walston and Company venture, and vice versa.”

The Court further pointed out that in the first amended complaint the plaintiff had charged that

several separate and distinct ventures were illegal and had caused [275] detriment to Transamerica and its stockholders. Another observation on the part of the court was to the effect that plaintiff should be allowed to file another amended bill, wherein some of the transactions complained of might be segregated into different counts.

Toward the close of that argument, and in reply to the court's suggestion to the effect that such matters as the so-called salary transaction, the Walston & Company transaction and the Mallory Trust transaction be treated in separate counts, plaintiff's counsel at first indicated that he would like to present a further memorandum on that point.

During this same discussion opposing counsel urged that an inspection of the minutes and other corporate records of Transamerica would disclose that during the latter part of 1931 and the early part of 1932 a majority of the board of directors of Transamerica were hostile to those particular defendants who were charged in the complaint as being the instigators of and the principals in the various allegedly fraudulent transactions complained of and had taken affirmative action against those defendants. Hence they pointed out that in view of such facts it would ultimately be incumbent upon plaintiff to overcome the charge that the present suit is barred by laches. Accordingly, they argued that in view of the great length of time which had elapsed, the fact that most of the defendants had ceased to be directors of Transamerica for many years past, the further circumstance that

two of the so-called principal defendants were dead, and likewise since plaintiff's counsel conceded that if this case were brought to trial it would entail bitterly contested, protracted hearings wherein the evidence would consist [276] mainly of the conflicting testimony of witnesses relying almost solely upon their recollection of incidents that had occurred many years ago, it was fair and proper that the complaint disclose fully the essential facts pertaining to the question of laches in order that that issue might be settled at the very threshold of the litigation.

To the latter contention plaintiff's counsel responded in substance that while he agreed with the same in principle he was not then prepared to say how he would treat this point in a complaint.

Somewhat later in the argument plaintiff's counsel stated:

“Now, as I said before, we have no objection to separating our complaint into counts on the various statements of the claims, but it occurs to me that in doing it we should have the advantage of knowing just what the court's decision is on the other questions, * * * ”

In explanation of what was meant by the expression, “other questions”, counsel added that he referred principally to the contention made on behalf of the defendants to the effect that the complaint failed to allege facts sufficient to relieve the plaintiff from the necessity of appealing to the stockholders to secure action on behalf of Transamerica be-

fore filing the present lawsuit. Whereupon the court announced that its ruling upon that point would be reserved until after the filing of a further amended complaint, and that while the court's tentative view then was that this contention was not sound, nevertheless, there was no reason why in such further amended pleading the plaintiff should not include anything she desired to add [277] in justification for not appealing to the stockholders.

The minutes of the court disclose that at the conclusion of that oral argument an entry was made reading as follows:

“The court makes a statement re its present views. It is ordered that the plaintiff serve and file an amended complaint within sixty (60) days and that the defendants have thirty (30) days thereafter to plead thereto.”

Thereafter plaintiff filed a second amended complaint together with a memorandum of points and authorities in support thereof. Just as in the case of the previous complaint, plaintiff has incorporated all of the matters complained of in a single count.

In justification of this type of pleading plaintiff's counsel, during the oral argument upon the pending motions, asserted that subsequent to the entry of the order granting leave to file a second amended complaint certain matters had come to their attention which had induced them to adopt a different legal theory respecting this litigation, and it was accordingly upon this new theory that the present

complaint had been drawn. Such different theory, counsel explained was to the following effect.

The first amended complaint was based upon the proposition that two of the defendants and a third person since deceased (whose legal representative was joined as a defendant) had conspired to acquire control of Transamerica and its affairs, that pursuant to such conspiracy, they had selected its directors, dominated its affairs and caused its directors to commit various breaches of their trust or [278] fiduciary obligations and that in furtherance of such conspiracy various overt acts had been committed at the time, in the manner and in the particulars therein pleaded, causing damages to Transamerica in the respective amounts therein alleged. On the other hand, the second amended complaint was prepared upon the theory that all of the persons who at any time had served as directors of Transamerica had conspired to commit the aforementioned breaches of their trust or fiduciary obligations, that in furtherance of such conspiracy certain overt acts had been committed at the times, in the manner and in the particulars therein pleaded, causing damages to Transamerica, its subsidiaries and departments in the respective amounts therein alleged, and that such of the defendants as had never served as directors were joined upon the theory that they had aided their co-defendants in committing one or more of the alleged breaches of trust.

It is the contention of plaintiff's counsel that but a single conspiracy has been pleaded in the second

amended complaint; that all of those directors and any others who at any time allegedly entered such conspiracy are equally liable regardless when, if at all, they served as directors of Transamerica; also, that it is immaterial when the different alleged overt acts were committed or when damages resulted therefrom; and that even though it may be pleaded that different defendants, acting either as directors or otherwise, entered the alleged conspiracy at different times, nevertheless, according to the allegations of said complaint they are charged with having adopted the entire, single, illegal scheme, and hence all defendants are equally liable [279] for all wrongs committed, including not only those perpetrated before they became directors or before they otherwise aided the alleged conspiracy, but also for all the various wrongs asserted to have been committed after they had ceased to be directors of Transamerica, or otherwise had terminated their connection with the enterprises claimed to have been involved with said conspiracy.

Examining the second amended complaint, it will be observed that the first eighteen paragraphs consist of more or less performatory recitals either identifying the parties to the litigation or otherwise pleading the matters which would entitle this court to take jurisdiction of the cause.

Paragraph XIX in substance charges that on or about October 11, 1928, all the defendants, including those particular individual defendants who at any time served as directors of Transamerica, together with the two former directors who had died

prior to the commencement of the suit, and in addition the forty-four other persons not sued as defendants but who at one time or another had also served as directors, conspired to control, operate and use Transamerica, its subsidiaries and departments, for their own benefit, by wrongfully appropriating its assets and otherwise using their official positions with Transamerica, and the confidential and special knowledge gained thereby, to the detriment of the latter corporation, its subsidiaries, etc. It is further alleged in the same paragraph that as a part of said conspiracy the defendants had said other persons not sued confederated to obtain and maintain control of the outstanding voting shares, also to select and dominate the [280] members of all its boards of directors and all its principal officers, that in addition the defendants and said other persons conspired that, in the event any persons elected as such directors were not members of said conspiracy, they would at all times be entirely dominated by the defendants and said other persons to the extent that such other directors would be the dummies of the defendants and said other persons, and in the performance of their official duties would exercise no independent judgment, but would respond entirely to the will of the defendants and said other persons; and also that in the event that the defendants and said other persons for any period of time should fail to maintain control of the voting shares of Transamerica and of the election of its directors, nevertheless, said conspiracy would not terminate but that the defendants and

said other persons would attempt to regain control of such voting stock and if successful then said conspiracy would continue indefinitely.

In Paragraphs XX to XL inclusive it is alleged that from time to time during a period covering many years the defendants and said other persons engaged in a series of transactions for the purpose of effecting the objects of said conspiracy. Particularly, it is charged in Paragraph XXI that during all times mentioned in the second amended complaint up to the filing thereof, the defendants and said other persons obtained and exercised exclusive control of all the outstanding voting shares of stock of Transamerica and thereby elected all members of its several Boards of Directors and controlled and dominated its business policies and affairs. [281]

Paragraph XXII discloses that through such stock control, of the forty-six designated by their true names, thirty-three defendants served at one time or another during the period involved herein as directors of Transamerica. Two others of such forty-six have been sued as the legal representatives of decedents who also at one time had been directors of that corporation. None of the remaining defendants appears ever to have held such position or otherwise to have been officially connected with that corporation.

Of the aforementioned thirty-three, sixteen had ceased to be directors by February, 1932 and thereafter had no further official connection with Transamerica, while another remained a director only about two months, namely from February to April,

1932. At that time, as pointed out in the herein-after mentioned order of the Securities and Exchange Commission issued in November, 1938, a change took place in the management. Of the remaining sixteen, one was a director only about eleven months, namely from April, 1932, until March, 1933, another held that position about nineteen months, to-wit, from April, 1932 until November, 1933, while five others served as directors from February or March, 1932, until sometime in 1939, seven have been directors from February or March, 1932 until the filing of this suit, while only two have served in that capacity throughout the entire period involved in this litigation.

In Paragraph XXIII there is set forth a list of forty-four other persons, none of whom is sued herein, but all of whom are also alleged to have served at one time or another as directors of Transamerica, and who likewise [282] are described as having been among the co-conspirators. Their election as directors is claimed to have been effected similarly through the aforementioned stock control.

Of these forty-four other persons, it is asserted that one was a director but a single day, to-wit on February 15, 1932, five others held such position barely nine days (February 14 to 24, 1932), two others were directors only nineteen or twenty days (one on March 26, and again from September 4 to September 22, 1931, and the other from April 6, to April 26, 1932), three more served but 27 or 28 days (one from September 4 to October 1, 1931, and the other two on March 26 and again from September

4 to October 1, 1931), also seven others were directors hardly two months (February to April, 1932), eight more acted as such but approximately five months (from about September, 1931 to February, 1932), still another was a director only six months (from March to September, 1931), yet another barely eight months (January 20 to September, 1929), also another served hardly nine months (March to December, 1940), also one was a director but ten months (April, 1932 to February, 1933), yet another was elected to such office only about twenty days prior to the filing of this suit and held the same approximately one year (March, 1941 to March, 1942), still another held such position barely thirteen months (January 19, 1929 to February, 1930), again two more served as directors only about one year and seven months (one from February, 1930 to September, 1931, and the other from July, 1930 to February, 1932), also another was a director barely one year and eight months January, 1930 to September, 1931), again two more held such positions [283] approximately two years and one month (January, 1930 to February, 1932, while two others served in that capacity only two years and four months (May, 1929, to September, 1931), still two others were directors barely two years and eight months (January, 1929 to September, 1931), again another served about two years and nine months (May, 1929 to February, 1932) while of the remaining two, one has been a director from March, 1940 to the date of the filing of the present suit and the other has served in such capacity from March, 1932 until the same time.

Thus upon the face of the second amended complaint it appears that during the period involved in this litigation Transamerica and its subsidiaries had been under the management of several different boards of directors.

In Paragraphs XXIV and XXV it is asserted that each individual director of Transamerica who did not become a member of said conspiracy was a dummy director and at all times was controlled and dominated by the defendants and said other persons to the extent that in the performance of official duties and in all corporate acts they exercised no independent judgment, but responded to the will of the defendants and said other persons; that likewise such directors of Transamerica who did not become members of said conspiracy or serve as dummy directors, either failed to discover any of the wrongful acts complained of, or, having discovered the same, failed at all times and in disregard of official duties, to take action or cause action to be taken to redress or prevent the continuance of such wrongs. [284]

Paragraphs XXVI to XXIX inclusive charge in substance that among the overt acts done in carrying out such conspiracy the defendants and said other persons, acting through the board of directors of Transamerica on or about May 25, 1929 caused the latter corporation to acquire all of the capital stock and all of the assets, and also to assume the liabilities, of another corporation know as Bancitaly Corporation; that among such liabilities was a certain salary agreement which in 1927 had been en-

ferred into between Bancitaly Corporation and the defendant A. P. Giannini, and which provided that for the services to be rendered by him as president of the latter corporation, beginning January 1, 1927, he should be paid five percent of its net profits per annum with a guaranteed minimum of \$100,000. In that connection said pleading avers that the last named corporation had been operated and controlled by defendants A. P. Giannini, P. C. Hale and James A. Bacigalupi and others not named, and that the aforementioned salary agreement was fraudulent and fictitious. It is further averred that among the liabilities thus assumed were certain allegedly fictitious credit items entered between April 13, 1927 and May 25, 1929 upon the books of the last named corporation in favor of defendants A. P. Giannini and L. M. Giannini and one V. D. Giannini (now deceased) in sums aggregating approximately \$925,000.

It is further stated that acting through the Board of Directors of Transamerica the defendants and said other persons, between April 5, 1929 and the end of that year, caused to be entered on the books of said corporation, its subsidiaries and departments, as liabilities under the provisions of the aforementioned salary agreement, certain [285] allegedly fictitious credits in favor of said last two named defendants and said V. D. Giannini (now deceased), in amounts aggregating not less than \$3,700,000.00. It is also there charged that between April 5, 1929 and January 1, 1939 the defendants and said other persons, acting through their several

boards of directors of Transamerica, illegally caused said corporation and its subsidiaries, etc. to pay to said last three named persons, on account of the aforementioned credits, varying amounts aggregating \$3,700,000.00, and that of the latter sum certain particular installments totalling \$1,271,647.01, were paid to said parties in each of the years 1930 to 1939 inclusive.

Here it should be noted that, although according to the complaint Bancitaly Corporation had been owned, dominated and controlled by only three of the defendants, to-wit, Hale, Bacigalupi and A. P. Giannini, up until about May 25, 1929, including the time when the aforementioned salary agreement was entered into, and also the period during which it is claimed that false entries were made upon the basis of said salary agreement in the books of the latter corporation thereby crediting the defendants A. P. Giannini and L. M. Giannini and said V. D. Giannini (now deceased) with sums aggregating \$925,000, nevertheless, all of the defendants together with all of the forty-four other persons listed as having been directors at one time or another of Transamerica are accused of wrong doing because of acts done in conformity with the provisions of said agreement.

While the plaintiff charges that all of the defendants and said forty-four other persons committed fraudulent and illegal acts—recitals which are but legal conclusions—her pleading fails to set forth with particularity the ultimate facts and [286] cir-

cumstances constituting the alleged fraud and illegality.

What, if anything, the defendants, other than the three last above named, or any of these forty-four other persons had to do with the making of said salary agreement, in what particulars the acts of those defendants and the forty-four other persons who were directors of Transamerica at the time the latter assumed liability under said salary agreement constituted fraud or other wrongful conduct, whether plaintiff claims that all of the defendants and all of said forty-four other persons knew that the credit entries made between April 5, 1929 and the end of that year in favor of defendants A. P. Giannini, L. M. Giannini and V. D. Giannini (now deceased), were false and fraudulent or fictitious, or whether plaintiff seeks to charge that because some of the defendants and other persons possessed such knowledge, particularly those who knew of these book entries or at least attended meetings of the board of directors of Transamerica during the period last mentioned, therefore all of the defendants and all of said forty-four persons may be charged as a matter of law with having caused such entries to be made upon the books of said corporation, its subsidiaries, etc., the complaint fails to disclose. Instead, much is left to conjecture.

The foregoing series of alleged wrongs may be described as having stemmed from or as being in some way connected with the alleged fraudulent salary agreement. It will also be observed that many alleged wrongful acts are charged in language

rather general though sweeping in character. Likewise it is claimed that these alleged wrongs were perpetrated over a period comprising many years, during [287] which not only one or another of several different boards of directors of Transamerica presumptively controlled the management of that corporation, but in addition what might be termed the primary wrong in this particular series appears to have been committed by the management of a different and earlier corporation, with which virtually all but very few of the defendants had nothing to do.

Further illustrating the multiplicity of transactions complained of we find that in paragraphs XXX to XXXIII inclusive plaintiff avers in substance that on or about December 17, 1932 at a time when Transamerica, its subsidiaries, etc., were engaged in a profitable investment and brokerage business, the defendants and said other persons, for the purpose of enriching themselves, particularly the defendants A. P. Giannini, L. M. Giannini and Claire Giannini Hoffman, and said V. D. Giannini (now deceased), and acting through defendant L. M. Giannini and said decedent, caused the defendant co-partnership of Walston and Company to be organized; that thereafter, during each of the years 1933 to 1938 inclusive, and acting through each of the several different boards of directors of Transamerica serving at the particular period involved, the defendants and said other persons caused Transamerica, its subsidiaries, etc. to

divert all of its investment and brokerage business to [288] said Walston and Company for the purpose of enriching themselves, particularly the last four named parties; and that during said last mentioned period, acting through each of the several different Boards of Directors of Transamerica, serving at the particular period involved, the defendants and said other persons caused Transamerica, its subsidiaries, etc. to disburse from the funds thereof to said Walston and Co. large sums as brokerage fees in connection with the business diverted as aforesaid and, in addition, sums for use as capital for said Walston and Company, the same aggregating about \$548,000, all of which sums were thereafter distributed by said Walston and Company to said last four named parties.

Here too, it may be pointed out that according to the [289] pleader the series of so-called Walston and Company frauds extended over a period of many years, and that during those years each of the several different boards of directors of Transamerica which happened to be serving at the particular time involved caused one or more of said acts to be committed. In this connection it should be added that all of the members of the co-partnership firm of Walston and Company, including the last four named parties, are listed among the defendants herein.

Still another series of alleged wrongful acts is found set forth in Paragraphs XXXIV to XXXVI inclusive. Here plaintiff has alleged that at sometime during 1932 all the defendants and

said forty-four other persons organized a certain private trust syndicate, suing Charles J. Smith and Margaret Mallory as trustees thereof, to engage in speculative operations in the stock of Transamerica and other securities; that sometime in the year 1932 all of the defendants and said forty-four other persons, acting through the then Board of Directors of Transamerica, caused the latter corporation, its subsidiaries, etc. to advance from the funds thereof amounts aggregating not less than \$1,500,000 to the defendants A. P. Giannini and L. M. Giannini and said V. D. Giannini (now deceased); that these three used such funds to acquire the controlling interest in the stock of another corporation (originally known as Bankitaly Mortgage Company but later its name was changed to Pacific Coast Mortgage Company); that in addition all defendants and said forty-four other persons caused Transamerica, its subsidiaries, etc. to advance from the funds thereof into the treasury of Pacific Coast Mortgage Company [290] amounts aggregating not less than \$1,500,000, which were employed by the latter corporation during each of the years 1933 to 1938 inclusive in carrying on speculative stock operations; also that such advances were made to further the personal interests of the three persons last named; that during the years last mentioned said Pacific Coast Mortgage Company collected as the result of such speculative operations profits aggregating not less than \$2,000,000 which from time to time were distributed to the three persons last named; and that all of

the alleged wrongs last enumerated were accomplished secretly and were concealed through purported loans and other transactions to secret agents, including one A. O. Stuart and A. P. Giannini Company, a corporation.

Here it should be pointed out that the allegations embraced within paragraphs XXXIV to XXXVI are so phrased as to leave uncertain whether plaintiff claims that the total of all the advances made from the funds of Transamerica with respect to the so-called Pacific Coast Mortgage Company dealings amounted to the sum of \$1,500,000 or the sum of \$3,000,000.

An additional series of allegedly wrongful acts is described in paragraphs XXXVII to XXXVIII. It is there averred that during each of the years 1933 to 1936 inclusive all of the defendants and said forty-four other persons, acting through each of the several different boards of directors of Transamerica serving at the particular period involved, caused that corporation, its subsidiaries etc. to advance from the funds thereof various amounts aggregating not less than \$3,000,000 to said trustees Smith and Mallory for use [291] as capital in conducting the business of the aforementioned trust syndicate; also that such capital was employed by said trustees and the beneficiaries of said trust syndicate for speculative operations in the stock of Transamerica and in other securities, resulting in large profits to said trust syndicate aggregating not less than three hundred thousand dollars; that from

time to time such profits were distributed, to the detriment of Transamerica, its subsidiaries, etc., in the amount last stated; and that such advances were consummated secretly and were concealed through purported loans and other transactions to secret agents. Here likewise the pleading is indefinite, that is, it is not clear whether plaintiff contends that the aforementioned profits were divided among the particular three or four persons who are repeatedly singled out in the complaint or that such profits were distributed among all of the defendants and all said forty-four other persons.

Still further illustrating the multiplicity of transactions complained of, we find that in Paragraph XXXIX plaintiff charges that at some time during each of the years 1932 to 1937 inclusive, all of the defendants and said forty-four other persons, acting through each of the several different boards of directors of Transamerica serving at the particular period involved, caused that corporation, its subsidiaries, etc. to engage in manipulating the market for the stock of said corporation, and that as a consequence Transamerica, its subsidiaries, etc. incurred expenses and sustained losses aggregating not less than \$2,250,000.

In Paragraph XL as well as in the various other portions of the second amended complaint are found recitals to [292] the effect that all of the defendants and said forty-four other persons, acting through each of the several different boards of directors of Transamerica serving at the particular period involved, caused the various corporate transactions

complained of to be kept by an intricate system of accounting, contrary to customary and proper accounting principles and beyond plaintiff's understanding, to such an extent that said transactions at all times were concealed by entries made under false, fictitious and misleading designations, also that some of the acts complained of were caused to be withheld by the same parties from the records of Transamerica, its subsidiaries etc. and to be evidenced by concealed and private agreements.

Paragraph XLI is devoted to setting forth the facts and circumstances describing how plaintiff first discovered the various alleged wrongs hereinbefore described. It is upon the allegations of that paragraph that plaintiff relies to excuse her delay in the commencement of this suit.

In substance plaintiff there asserts that at all times up until about April 27, 1939 the defendants and said forty-four other persons kept concealed from her all the corporate transactions of which complaint is made; also that during all such times she had no knowledge, information or notice concerning the same, or respecting any wrongful conduct of the defendants or of said forty-four other persons concerning their management of the business of Transamerica or its subsidiaries or departments; that she reposed complete confidence in defendant A. P. Giannini and all of the directors and officers of Transamerica and its subsidiaries, etc., until about April 27, 1939, when for [293] the first time a certain proceeding then pending before the Securities and Exchange Commission of the United

States was called to her attention. In this connection it is further alleged that thereupon she investigated said proceeding and ascertained that under date of November 22, 1938 said Commission had ordered a hearing to determine whether the stock of Transamerica should be suspended or withdrawn from certain securities exchanges by reason of false and misleading statements, which did not correctly reflect the true financial condition of Transamerica and its subsidiaries and departments; that on the date last mentioned she for the first time ascertained the matters and charges contained in the order of said Commission directing a hearing to be had respecting the same and that a copy of such order was being tendered for filing to show the nature and extent of plaintiff's first discovery of suspicious circumstances concerning the wrongs complained of.

Plaintiff further alleges that prior to April 27, 1939 she had no knowledge, information or notice concerning the aforementioned proceeding before said Commission, and did not have reason to suspect any of the defendants or other persons of wrongdoing in the conduct of the business of Transamerica, its subsidiaries etc.; also that said proceeding before said Commission is still pending, and that the matters and charges referred to in said order of said Commission were developed slowly through detailed examinations and audits of the records of Transamerica and its subsidiaries, etc. by expert accountants on behalf of said Commission, and were presented to it by the testimony of unwilling witnesses through examination of the latter by experi-

enced lawyers. [294] Finally it is therein averred that immediately after making the aforementioned discovery plaintiff proceeded to investigate and at all times ever since has continued diligently to investigate to ascertain the true and complete facts respecting the conduct of defendants and said forty-four other persons as to their management and operation of the business of Transamerica and its subsidiaries, etc., but thus far she has been unable to complete such investigation and is still proceeding therewith.

A pleading must be construed most strongly against the pleader. The presumption is that the latter has stated his cause as strongly as the facts warrant. In view of plaintiff's admission to the effect that at all times since April 27, 1939 she had continued diligently to investigate to ascertain the truth concerning the conduct of the defendants and the other directors with respect to their management and operation of the business of Transamerica, and that although she had been so engaged for a period of approximately two and a half years, nevertheless, she had been unable to complete such investigation and was still carrying on the same at the time of filing her last amended complaint, there arises at least the inference that when she does conclude such inquiry plaintiff may discover one or more of her charges to be unsupported by the facts.

The accusations made herein are of a most serious nature. The period of time involved extends over a great many years. The good name of an exceedingly large number of individuals is under attack.

Prior to the filing of the present suit two of the allegedly chief conspirators had died. Their legal representatives are included among the [295] eighty-one defendants. Since the filing of the second amended complaint one of the defendants also has died. So far as the pleading discloses only four of the present defendants are residents of this district. Where the remaining individual defendants reside, or from what distances they may be required to travel in order to attend the trial of this cause, does not appear, except that they reside in California. The principal office and place of business of Transamerica are alleged to be in the City and County of San Francisco, namely in the Northern District of this State. For aught that now appears the meetings of its directors have taken place in the latter district. Doubtless many corporate records, more or less voluminous, will need to be transported from the corporation's principal office for the purpose of the trial. The plaintiff herself claims to be a resident of the State of New York. Just why this litigation should have been filed in this District is not clear.

Under these circumstances before the defendants are subjected to the burdens, financial and otherwise, which a trial of the charges aforementioned would impose, they are entitled to be apprised with reasonable definiteness, both as to what it is claimed was their specific participation in the acts complained of, also wherein it is asserted their particular conduct constituted a violation of plaintiff's rights. In any event, plaintiff's admission as above

stated to the effect that she is still endeavoring to ascertain the truth of the charges she has made herein furnishes a most convincing ground for applying strongly against the pleader the rule that in all averments of fraud the circumstances constituting the fraud shall be stated with particularity. (See Rule 9b FRCP.) [296]

Turning now to the aforementioned order issued by the Securities and Exchange Commission under date of November 22, 1938—we find that the same embraces in substance the following matters. It is therein recited that Transamerica had registered its shares of capital stock on certain national exchanges by filing on August 7, 1937 a certain application with said exchanges and with said Commission, pursuant to Section 12 (b) of the Securities Exchange Act of 1934 as amended, and pursuant to Rule JB1 of said Commission. Said order further declares that said Commission, having reasonable ground to believe that Transamerica had failed to comply with the provisions of said Section 12 (b) as amended and of its rules, in that said applications contained false and misleading statements of material facts, including financial statements of Transamerica and its subsidiaries, which did not reflect the true financial condition thereof, all as more particularly set forth under the heading of eighteen separate items, said Commission ordered that a public hearing be held to determine whether Transamerica had failed to comply with the provisions of said Act and of its rules in the particulars set forth in said order, and

if so, to determine whether it would be necessary or appropriate to suspend or to withdraw the registration of Transamerica's capital stock on said exchanges. In addition this order designates the officer to conduct said hearing, and fixes the time and place for holding the same.

A reading of the particulars specified under said eighteen items discloses that, except as hereinafter noted, they all related to certain entries in the books and records of Transamerica or one or more of its subsidiaries, which entries purported to reflect the financial condition of said corporations as of December 31, 1936, and appeared to said [297] Commission to be false and misleading. These entries included such matters as a certain charge to "Paid-In Surplus" resulting from cancellations and redistribution of capital stock, appearing in the balance sheet of Transamerica as of December 31, 1936, which item in the Commission's opinion should have been entered as a current expense chargeable to profit and loss. Another specification pertained to alleged similar erroneous charges entered in 1934 and in 1935. Still other specifications referred to such items as excessive valuations of assets, the failure to charge off certain entries as losses, inadequacy of reserves, and like matters.

In addition said order pointed out that in the aforementioned applications Transamerica had failed to disclose that three of its then directors—one of these died prior to the commencement of this suit—constituted a "parent" of said corporation by virtue of the fact that said three directors at that time held general stock proxies empowering

them to direct the management and policies of Transamerica; and also that in said application Transamerica had failed to state that during the years 1930 to 1936 inclusive it had made disbursements in various amounts as remuneration to a certain officer and director thereof, to-wit, the defendant A. P. Giannini. Respecting the latter item, said order declared that the Commission had "reasonable grounds to believe that on January 20, 1930, the sum of \$1,400,000 was placed on the books of Bancitaly Company of America (then a subsidiary of Transamerica Corporation) to the credit of A. P. Giannini; that of this \$1,400,000 all but \$792,000 had been paid to A. P. Giannini, by September, 1931, at which time counsel for the then existing [298] management of Transamerica Corporation advised that further payment would be illegal; that thereafter subsequent to the change in management in 1932, A. P. Giannini withdrew from the balance of \$792,000 the following sums:" (here followed a list of five annual disbursements made to defendant A. P. Giannini in each of the years from 1932 to 1936 inclusive.)

It is to be noted that nowhere in the aforementioned order did said Commission declare or even intimate there was reasonable ground to believe that any of the defendants had engaged in a conspiracy or in any of the alleged wrongful acts complained of herein. On the contrary, the above quoted excerpt from said order rather would imply that said Commission believed that the management of Transamerica at least as it existed in September, 1931,

had challenged the legality of the aforementioned credits entered in favor of the defendant A. P. Giannini, also that the Commission found that in 1931 the then existing board of directors of that corporation had been hostile to and had prevented him from drawing any further sums under said credits, and further believed that it was not until some time after "the change in management in 1932" that he succeeded in withdrawing any additional sums on account of such credits.

Furthermore, in view of the fact that at the time of the filing of the second amended complaint, namely after it had been conducting its investigation over a period of about four years, said Commission had not been able to conclude the same, nor had it been able to determine whether Transamerica had failed to comply with any of the provisions of the Securities and Exchange Act or of its rules, or [299] whether it would be necessary or appropriate to suspend or withdraw the registration of Transamerica's capital stock on any of the national exchanges, it can hardly be said that said order of the Commission supports plaintiff's averment to the effect that the disclosures made in said order uncovered the alleged wrongful acts of which she complains in the present lawsuit.

Indeed the status of the proceeding before said Commission after the lapse of nearly four years as above described, and the further circumstance that the Commission's order, upon which plaintiff apparently mainly relies to justify the very long delay in the filing of the present suit, contains no recitals

supporting the charges she has made herein, rather warrants the conclusion that if the bar of the statute of limitations or of laches is to be avoided it will be necessary for plaintiff to plead other facts besides those set forth in her second amended complaint.

In the concluding paragraphs of her complaint, besides alleging she has no plain, speedy or adequate remedy at law, plaintiff has undertaken to explain why it would be futile for her to demand of the directors or of the stockholders of Transamerica to institute action to redress the alleged wrongs on account of which she seeks relief, in other words, to justify her omission to make any such demand. Respecting such omission, plaintiff has charged that all those who had been members of the several different boards of directors of Transamerica during any of the periods mentioned in her complaint, including those serving at the time of the commencement of this suit, have been sued as defendants or otherwise have been accused of committing the alleged wrongs pleaded therein, also that at all such times the defendants and said forty-four other persons held and exercised [300] control of the voting share of stock of Transamerica, that knowing such facts plaintiff had made no demand on the board of directors of that corporation or of its shareholders to institute such action, as such a suit to be effective must be directed against all of the defendants and the forty-four other persons named in the complaint, and accordingly that such a demand would be a futile and idle act. In that same connection, it is further

asserted that the outstanding shares of stock of Transamerica are held by approximately 200,000 persons residing in substantially all of the states and territories of the United States and in numerous foreign countries, that such a demand upon the stockholders to be effective would require an expensive and prolonged struggle with adverse boards of directors and persons to wrest control of such voting shares from them, and that such struggle would be a futile and idle act.

By the prayer of her complaint plaintiff seeks a decree declaring a trust relationship between each of the defendants and herself and also between Transamerica and the defendants; also that all defendants render an accounting of their dealings with the assets etc. of Transamerica and of their acts as directors and officers thereof concerning the transactions complained of; that upon such accounting judgment be entered against each of the defendants in the amounts to which Transamerica and the plaintiff may be entitled, but not less than the sum of \$8,798,000, together with an attorney's fee and costs, plus such other relief as may be equitable.

Analyzing this pleading in the light of the prayer thereof it would appear that of the \$8,798,000 sought to be recovered herein, the sum of \$3,700,000 is claimed to represent losses sustained as the result of payments made by [301] Transamerica, its subsidiaries, etc., pursuant to the provisions of the so-called salary agreement, also the further sum of \$548,000 is described as constituting the damages suffered on account of what may be termed the

Walston and Company series of transactions, likewise the further amount of \$2,000,000 is asserted to reflect the damages resulting from the Pacific Coast Mortgage Company dealings, while the sum of \$300,000 is referred to as constituting the damages arising out of the so-called Smith and Mallory trust syndicate series of transactions, and the balance of \$2,250,000 is charged as representing the losses resulting from stock market manipulations in which Transamerica and its subsidiaries purportedly engaged.

The pleading we are here considering is long and prolix, comprising approximately thirty-seven pages. It is replete with surplusage and repetitions as well as legal conclusions, including numerous recitals, more or less general, vague and indefinite, charging various acts of wrongdoing. Among these are accusations of fraud, bad faith, breaches of trust and of fiduciary obligations, and also misappropriation and conversion of corporate assets.

These alleged wrongs are asserted to have commenced with an allegedly fraudulent transaction entered into during the year 1927, in other words, nearly a decade and a half prior to the filing of the present litigation. During that rather lengthy period there were changes in the management of Transamerica through the election of several different boards of directors. Virtually a majority of those defendants who have been sued by their true names and who [302] had served as directors had ceased to have any official connection with that corporation during the respective periods when it is

asserted that all but one of the transactions complained of were consummated.

While it is averred that, with the exception of a few of the partners of Walston and Company, all of the defendants sued by their true names, together with the forty-four other persons listed, had served at one time or another as directors of Transamerica during most of the period within which the alleged wrongs were committed, nevertheless, it is charged that each of the series of transactions complained of stemmed from some corporate act performed by the particular board of directors acting in that capacity at the specific time involved. In other words, but for some corporate step on the part of those certain defendants who functioned as directors at the particular period involved, none of the alleged wrongful transactions could have been effected.

While plaintiff's counsel have argued that all of the acts complained of constituted but a single conspiracy extending over a period of about fourteen years, we see no escape from the conclusion that by her pleading plaintiff has sought to charge—as hereinbefore outlined—the commission of several separate and distinct series of wrongs, each disconnected from all the others. We are not persuaded that the evidence which, for example, might tend to prove the so-called fraudulent salary agreement or the alleged wrongs committed in carrying out the provisions thereof, would have any connection with the evidence pertaining to what has been described as the series of Walston and Company transactions, or would throw any light upon [303] the

Pacific Coast Mortgage Company dealings, or would be relevant to what has been referred to as the series of Smith and Mallory trust syndicate transactions, or would have any connection with the operations whereby it is claimed Transamerica sustained large monetary losses as the result of engaging in stock market manipulations.

Furthermore, we do not perceive upon what legal theory it may be held that under the facts alleged any one of the aforementioned series of transactions constituted a part of or was bound up with any one or more of the remainder. Nor has any case been cited which would support plaintiff's contention to the effect that alleged wrongful acts, done by certain individuals while carrying out their functions as directors of a corporation, may be charged against others who neither were directors at the time such corporate steps were taken nor were otherwise engaged in the specific transaction involved.

Hence we conclude that each claim founded upon a separate transaction, as hereinbefore outlined, should have been stated in a separate count, and that such separation would have facilitated the clear presentation of the matters set forth. (See Rule 10b, FRCP)

In essence the argument advanced by plaintiff's counsel is analogous to that presented on behalf of the plaintiff in the case of *Bowman vs Wolk*, 166 Cal. 121, 135 Pac. 37. In the latter case, as here, the complaint consisted of but a single count. It was there contended that such a pleading was proper, even though several distinct tortious acts

were complained of, the argument being that these several acts had been committed in pursuance of a single conspiracy. Overruling such contention, the Supreme [304] Court of California there declared in part:

“The theory of counsel for plaintiffs is that by reason of the claim that all the acts were done in pursuance of a conspiracy, we have but a single cause of action stated in the complaint, a cause of action for damages for ‘conspiracy’, and that any variety of wrongful acts whether ordinarily capable of being united in a single action or not may be so united if done in pursuance of a conspiracy. We are satisfied that this theory is irreconcilable with well-settled rules of law, and can not be upheld. * * *

“* * * * For instance, in 1 Cooley on Torts (3d Ed.) p. 210, it is said: ‘The general rule is that a conspiracy cannot be made the subject of a civil action unless something is done which, without the conspiracy, would give a right of action. The damage is the gist of the action, not the conspiracy.’ In *Green v Davies*, 182 N. Y. 503, 75 N. E. 537, 3 Ann. Cas. 310, it is said: ‘While it is true that in a criminal prosecution for conspiracy the unlawful combination and confederacy are the gist of the offense, not the overt acts done in pursuance thereof, * * * the doctrine does not apply to civil suits for actionable torts.’ (citing cases) * * * To use the words of another New York opinion, such a complaint does not show ‘a single, indivisible wrong, for which an action will lie’ but ‘an aggregation of certain tortious acts for each [305] of which a sepa-

rate action will lie for the recovery of the damages flowing therefrom.' See *Kolel v Eliach*, 29 Misc. Rep. 503, 61 N. Y. Supp. 937. * * *

That a corporation in the forepart of 1927 entered into an agreement with the president thereof to compensate him for his services on the basis of five percent of its net annual profits, including a guaranteed minimum salary of \$100,000 per year, did not of itself constitute a fraudulent or fictitious or pretended transaction. Likewise, the circumstances that a second corporation about two years later acquired all of the capital stock and all of the assets and assumed all of the liabilities of the first mentioned corporation, including said salary agreement, did not of themselves make such transaction fraudulent or fictitious or pretended. Again, the fact that either or both of these corporations caused credits to be entered upon their respective books or caused disbursements to be made on account of the provisions of said salary agreement—such acts would not, by themselves, become fraudulent or fictitious or pretended. For the pleader to label transactions of the type above mentioned as fraudulent, fictitious, pretended and as being without legal right or authority, would not be stating the ultimate facts from which, if proved, such legal conclusions might properly be drawn, but rather pleading the legal conclusions themselves.

The second amended complaint lists twenty-six corporations as subsidiaries of Transamerica. It is there averred that the latter corporation owned, controlled and operated each of these subsidiaries. As

heretofore pointed out, plaintiff charges that as the result of a series of various alleged wrongful acts both Transamerica and also in some greater or lesser degree, these numerous subsidiaries [306] sustained substantial losses.

In the light of the allegations and admissions in her pleading, and in view of the circumstances and conditions to which attention previously has been directed, we are persuaded that before it can be held that plaintiff has a cause or causes of action against the defendants or any of them, and likewise before it can be determined that any such cause or causes of action may be filed at this late date, it will be necessary for plaintiff to allege other matters besides those pleaded in her second amended complaint.

The parties herein sued are entitled to be informed whether plaintiff claims that not only Transamerica but also each and all of these twenty-six subsidiaries, or if only some then which of the latter, acquired all of the capital stock and all of the assets and assumed all of the liabilities of Bancitaly corporation, including the alleged fraudulent salary agreement. Likewise, they ought to be apprised whether she asserts that not only Transamerica but also each and all of these subsidiaries, or if only some then which of the latter, entered upon their books credits and disbursed funds on account of the provisions of said agreement. Furthermore, they should be informed respecting the ultimate facts upon which the pleader bases her charges to the effect that said agreement and the other transactions mentioned were fraudulent, fictitious and pretended,

and without legal right or authority. In addition they are entitled to be advised whether plaintiff claims that not only Transamerica but also each and all of these subsidiaries, or if only some then which of the latter, participated in the remaining series of alleged wrongful acts, including the [307] so-called Walston and Company transactions, the Pacific Mortgage Company dealings, the so-called Smith and Mallory trust syndicate transactions and the stock market manipulations.

Again, and for similar reasons the defendants are entitled to have plaintiff disclose whether she claims that all of them and also all of said forty-four other persons listed as having served at one time or another as directors of Transamerica, or if only some then which of them, held and exercised control of all of the issued and outstanding voting shares of capital stock of Transamerica, and also to set forth the ultimate facts upon which she bases such conclusions. Likewise, these litigants should be informed whether the pleader asserts that all of the defendants and all of the aforementioned forty-four other persons, or if only some then which of them, elected and completely dominated and controlled the several boards of directors of the latter corporation, and also should be given the ultimate facts upon which she bases these conclusions. In addition the litigants ought to be advised whether plaintiff asserts that each and all of the defendants, or if only some then which of them, had knowledge of the facts which she claims constitute the alleged frauds etc., complained of, also whether such knowledge was actual

or constructive, and when it is contended such knowledge was acquired.

Finally and upon similar grounds we believe that the defendants are entitled to have plaintiff state whether she claims that each and all of the defendants, or if only some then which of them, were conspirators, also which if any of the defendants were puppets but not conspirators, also which [308] if any of them were neither conspirators nor puppets but failed to discover the alleged wrongful acts complained of, and which of the defendants though neither conspirators nor puppets discovered such alleged wrongful acts and failed to take action thereon.

Plaintiff has amended her complaint twice. In view of this fact, and of the other circumstances and conditions previously noted, we have concluded that each and all of the respective motions to dismiss should be granted. We have further concluded that the appropriate procedure would be, instead of granting plaintiff unconditionally the right to file another amended complaint, to prescribe the conditions upon which she may apply for leave to file a third amended complaint.

Dated April 16, 1943.

Copies to counsel.

[Endorsed]: Filed Apr 16, 1943. [309]

[Title of District Court and Cause.]

NOTICE OF ORDER GRANTING
MOTIONS TO DISMISS

To Plaintiff above named, and
To Vincent A. Marco, Esq., Percy V. Clibborn,
Esq., Homer N. Boardman, Esq. and Joseph
A. Ruskay, Esq., Her Attorneys:

You, And Each Of You, Will Please Take Notice that on April 16, 1943, the above entitled court duly made and gave its order granted the motions filed on behalf of the respective defendants herein to dismiss the Second Amended Complaint, and further ordering that on or before June 1, 1943, you, the said plaintiff, may file an application for leave to file a Third Amended Complaint, provided that such application have attached thereto your proposed further amended pleading and also be accompanied by a memorandum [310] of supporting points and authorities, and provided further that at least ten days' notice shall be given of the hearing of such application.

Dated: Los Angeles, California, April 19, 1943.

COSGROVE & O'NEIL

T. B. COSGROVE

F. J. O'NEIL

JOHN N. CRAMER

By JOHN N. CRAMER

Attorneys for Amadeo P. Giannini, Individually
and in All of the Capacities in Which He is
Sued

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed Apr. 20, 1943. [311]

[Letterhead]

Law Offices

Cosgrove & O'Neil

458 South Spring Street

Los Angeles

October 27, 1942.

Hon. Harry A. Hollzer,
United States District Judge,
Federal Court and Post Office Building,
Los Angeles, California.

In re: Papantonio vs. Giannini;
No. 1490-H Civil.

Dear Sir:

At close of hearing Monday, October 12, 1942, I make a statement respecting the often mentioned letter of December 9, 1931, from the President and Chairman of the Board of Directors of Trans-america to its stockholders concerning the so-called proxy controversy (Tr., p. 96, line 19, to p. 98, line 10). My suggestion was to the effect that the letter upon its face disclosed that the Directors then in office were dealing at arms length with A. P. Giannini (Tr., p. 96, line 22, to p. 97, line 13). Your Honor immediately inquired if the corporate records disclosed that the letter was sent to the stockholders, or directed to be sent to the stockholders (Tr., p. 97, lines 14-17). The following colloquy among counsel occurred:

“Mr. Cosgrove: Yes; and we have an affidavit here supporting our motion that covers that matter.

Mr. Boardman: Not a corporate record.

Mr. Cosgrove: Sir?

Mr. Boardman: It was not a corporate record nor a corporate act.

Mr. Cosgrove: Well, we think it was a corporate act and we think the record discloses it was a corporate act.

Mr. Boardman: Well, I was advised otherwise.

Mr. Ferrari: It was an act of the then board of directors.

Mr. Cosgrove: Yes; it was sent out by them. The letter of the board of directors will disclose that itself." (Tr., p. 97, line 18, to p. 98, line 3.) [313]

Thereupon the court again inquired:

"The Court: Is there anything that discloses from the minutes or any other records of the corporation that such a letter properly was sent to all the stockholders?" (Tr., p. 97, lines 4-6.)

We have secured a photostatic copy of minutes of the meeting of the Board of Directors held December 9, 1931. These minutes are at some length. At page 7, and continuing to page 19, this particular matter is under discussion.

The minutes recite:

"The Chairman (Elisha Walker) submitted to the meeting a copy of a communication dated November 27, 1931 from 'Associated Transamerica Stockholders' addressed to the stockholders, directors, officers and employees, etc. of Transamerica California banks, which he

stated had been mailed to stockholders by 'Associated Transamerica Stockholders' since the last meeting of the Board. He also submitted to the meeting a proposed draft of letter from the Board of Directors to the stockholders and also a proposed letter to the stockholders of the Corporation to be signed by himself and Mr. Bacigalupi. He also submitted to the meeting a form of proxy running to a Proxy Committee consisting of Elisha Walker, James A. Bacigalupi, George Murnane, A. Pedrini and C. N. Hawkins.

"Such letter of 'Associated Transamerica Stockholders' and such proposed letters from the Board of Directors and officers to the stockholders of the corporation, and such form of proxy are as follows:

* * * * *

Then follows copy of each of the documents referred to by Chairman Elisha Walker. Each letter is copied in its entirety in the minutes. Each of the two letters of December 9th is signed by Elisha Walker and James A. Bacigalupi. On one of the two the title "Chairman" appears beneath the signature of Mr. Walker, and "President" below the signature of Mr. Bacigalupi. The letter containing the signatures with designation of office closes with these words: (Caps.) "BY ORDER OF THE BOARD OF DIRECTORS" [314]

Following the letters the minutes disclose this entry:

“Thereupon, after full discussion and consideration, on motion duly made and seconded, the following resolutions were unanimously adopted:

“Resolved that the letter from the Board of Directors to the stockholders of this corporation, dated December 9, 1931, and the form of proxy to be enclosed therewith in the forms which have been submitted to this meeting be, and they hereby are, approved, and the proper officers of this Corporation be, and they hereby are, authorized to mail such letter and proxy to the stockholders of the Corporation in substantially such form;

“Resolved that Messrs. Elisha Walker, James A. Bacigalupi, George Murnane, A. Pedrini and C. N. Hawkins be, and they hereby are, appointed as the Proxy Committee named in the form of proxy approved by the foregoing resolution, to receive and vote such proxies for the purposes therein set forth;

‘Resolved that the Board of Directors hereby approves mailing the proposed letter from Messrs. Elisha Walker and James A. Bacigalupi to stockholders in substantially the form submitted to this meeting in the same envelope with the letter from the Board of Directors to stockholders approved at this meeting.’”

I enclose photostatic copy of the minutes for your

Honor's examination. Another copy is being delivered today to Mr. Boardman, counsel for plaintiff.

Respectfully submitted,

COSGROVE & O'NEIL

By T. B. COSGROVE

TBC:FH

CC—Mr. Louis Ferrari

Mr. Edmund Nelson

Judge Russ Avery

Mr. Gordon Gray

Mr. Claude N. Rosenberg

Mr. G. L. Berrey

Mr. Robert A. Odell

Mr. Homer N. Boardman [315]

MINUTES

A regular meeting of the Board of Directors of Transamerica Corporation, a Delaware Corporation, was held at the office of the Corporation, No. 44 Wall Street, New York, N.Y., on Wednesday, December 9, 1931, at 12:30 o'clock P.M., Eastern Standard Time, pursuant to due notice thereof.

The following directors were present:

Messrs. Frederic W. Allen,

Charles E. Cotting,

Paul D. Cravath,

Frederic C. Dumaine,

Henry O. Havemeyer,

George Murnane,

Roland L. Redmond, and

Elisha Walker,

constituting a quorum of the Board. At about 1 o'clock the meeting was moved to the Rookery Club for luncheon at which point Messrs. Charles W. Nash and Fred W. Sargent joined the meeting.

Mr. D. C. Swatland, counsel, was also present.

Mr. Elisha Walker, Chairman of the Board, presided at the meeting and Mr. Swatland acted as Secretary of the meeting and kept the minutes thereof.

The minutes of the special meeting of the Board of Directors held November 24, 1931, were submitted to the meeting and, on motion duly made and seconded, approved.

The Chairman stated that it was desirable to advance the date of the annual meeting of the stockholders of this Corporation from the last Thursday in March (as now fixed by Section 4 of the by-laws) to the third Monday in February. He stated that for such purpose it was necessary to amend Section 4 of the by-laws. He further stated that in order to effect such amendment, it was necessary in accordance with Section 47 of the by-laws for the Board at this meeting to propose such amendment which must be adopted at the next regular or special meeting of the Board.

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

Resolved that, in accordance with the provisions of Section 47 of the By-laws of the Corporation, this Board hereby proposes that Section 4 of the By-laws of the Corporation be amended to read as follows:

“4. The annual meeting of the stockholders shall be held on the third Monday of February in each year, if not a legal holiday under the laws of the State where such meeting is to be held, and, if a legal holiday under the laws of said State, then on the next succeeding day not a legal holiday under the laws of said State, at 10 o'clock A.M., when they shall elect by a plurality vote, by ballot, a Board of Directors, and transact such other business as may properly be brought before the meeting.”

The Chairman reported to the Board that in accordance with the authority granted by the Board of Directors at their last meeting, the officers had refused to give the information requested by “Associated Transamerica Stockholders” in their demand of November 17, 1931, other than copies of the Certificate of Incorporation and By-laws of the Corporation.

The Chairman reported that in accordance with the resolution adopted by the Board at its last meeting, the officers had signed and delivered to Mr. Lynn P. Talley a contract, a copy of which is as follows: [316]

Agreement, dated November 25, 1931, between Transamerica Corporation, a Delaware corporation (hereinafter called the Corporation), party of the first part, and Lynn P. Talley, of No. 330 Powell Street, San Francisco, (hereinafter called Mr. Talley) party of the second part.

Whereas the Corporation owns or controls over 99% of the capital stock of Bank of America National Trust and Savings Association, a national banking association organized under the national banking laws of the United States and having its head office at No. 1 Powell Street, San Francisco, California (hereinafter called the Bank); and

Whereas the Corporation has asked Mr. Talley to serve, and Mr. Talley has consented to serve, as a director of the Bank and as Chairman of the Board of Directors of the Bank for the period, and at the salary and upon the other terms and conditions hereinafter set forth; and

Whereas Mr. Talley, in pursuance of such agreement, has resigned his position as Governor of the Federal Reserve Bank, Dallas, Texas, and on September 22, 1931 was elected a director of the Bank and Chairman of the Board of Directors of the Bank and has entered upon the performance of his duties as such; and

Whereas the Corporation has heretofore paid to Mr. Talley, the fixed agreed amount of \$25,000 in cash to reimburse Mr. Talley for his expenses in connection with his removal from Texas to California;

Now, Therefore, This Agreement Witnesseth: that in consideration of the acceptance by Mr. Talley of the positions of director and Chairman of the Board of Directors of the Bank as aforesaid, and of the mutual agreements hereinafter set forth, the parties hereto have agreed as follows:

1. The Corporation will use its best efforts to cause the election and/or re-election of Mr. Talley as a director and as Chairman of the Board of Directors of the Bank to hold such offices for a period of at least three years commencing October 1, 1931, and, subject to the election and/or re-election of Mr. Talley to such offices during such period, Mr. Talley will accept such offices during such period and will devote his full time, attention and energy to the due and faithful performance and discharge of the duties of such offices to the best of his ability.

2. The Corporation hereby guarantees the payment to Mr. Talley by the Bank, for three years from October 1, 1931, of a salary at the rate of \$75,000 per year during such period. The Corporation will pay to Mr. Talley at the end of each month during such period the amount, if any, by which the aggregate salary paid to Mr. Talley by the Bank during such month shall be less than one-twelfth of \$75,000. Any salary received by Mr. Talley for his services as an officer of any corporation or institution affiliated with the Bank shall, for the purpose of determining the amount, if any, to be paid by the Corporation under this paragraph 2, be deemed to have been paid to Mr. Talley by the Bank.

3. In the event that Mr. Talley shall cease to hold the office and discharge the duties of Chairman of the Board of Directors of the Bank during such period of three years, because of his death, or voluntary resignation, all obligation and liability of the Corporation hereunder shall thereupon cease and determine, except in respect of any amounts

payable to Mr. Talley hereunder to the date when he shall so cease to hold such office and discharge such duties.

4. If at any time during the three year period above mentioned the Corporation should not own or control a majority interest in the Bank and a majority of the Board of Directors of the Bank should be persons with whom Mr. Talley shall refuse to sit, he may withdraw from the position of Chairman of the Board of Directors of the Bank and such withdrawal shall not be deemed a voluntary resignation as specified in paragraph 3 hereof and shall not affect, change or vitiate this agreement or the payments to be made to Mr. Talley in accordance with the covenants hereof, provided however, that in the [317] event Mr. Talley shall elect so to withdraw, he shall, unless the Board of Directors and the management of the Corporation as at present constituted shall be substantially altered, thereupon give his services to the Corporation, in such capacity as the Board of Directors of the Corporation may designate and without other compensation than the monthly amounts guaranteed to him hereunder, for the remainder of said three-year period. If at any time within said three-year period, the Board of Directors and management of the Corporation as at present constituted should be substantially altered at a time when Transamerica Corporation owns or controls a majority interest in the Bank, Mr. Talley may withdraw from the position of Chairman of the Board of Directors of the Bank and such withdrawal shall not be deemed a voluntary resignation

as specified in paragraph 3 hereof and shall not affect, change or vitiate this agreement or the payments to be made to Mr. Talley in accordance with the covenants hereof.

5. In the event that Mr. Talley shall, for any reason or cause, except as specified in paragraph 3 hereof, cease to hold the offices of Director and Chairman of the Board of Directors of the Bank within said three-year period and if the Corporation shall not thereupon be entitled to receive Mr. Talley's services as provided in paragraph 4 hereof, then the Corporation, provided Mr. Talley shall have up to that time faithfully performed his obligations hereunder, agrees and guarantees to pay to Mr. Talley an amount in cash in one payment to be determined by deducting the total amount of monthly payments theretofore made to him by the Bank and the Corporation from the amount he would have otherwise received during said three-year period at the rate stipulated herein. The payment of such sum by the Corporation shall constitute a full liquidation and discharge of the guaranty and agreements of the Corporation hereunder.

6. This agreement shall inure to the benefit of and be binding upon the Corporation, its successors and assigns, but shall not be assignable in whole or in part by Mr. Talley.

In Witness Whereof, the Corporation pursuant to resolution of its Board of Directors, has caused this agreement to be signed in its name by its proper officers thereunto duly authorized, and Mr. Talley

has hereunto set his hand and seal, this 25th day of November, 1931.

TRANSAMERICA CORPORATION

/s/ By JEAN MONNET

Vice-Chairman of the Board.

Attest:

Assistant Secretary.

/s/ R. P. A. EVERARD (L.S.)

/s/ LYNN P. TALLEY [318]

The Chairman stated that in accordance with the resolution of the Board adopted at its last meeting, the officers had signed the delivered to Dr. A. H. Giannini a contract, a copy of which is as follows:

[319]

Agreement dated November 25, 1931, between Transamerica Corporation, a Delaware corporation (hereinafter called the Corporation), party of the first part, and Dr. Attilio Henry Giannini, of Biltmore Hotel, Los Angeles, California, (hereinafter called Dr. Giannini), party of the second part.

Whereas, the Corporation owns or controls over 99% of the capital stock of Bank of America National Trust and Savings Association, a national banking association organized under the national banking laws of the United States and having its head office at No. 1 Powell Street, San Francisco, California, (hereinafter called the Bank); and

Whereas, the Corporation has asked Dr. Giannini to serve, and Dr. Giannini has consented to serve, as Chairman of the Executive Committee of the Board of Directors of the Bank for the period and at the salary and upon the other terms and conditions hereinafter set forth;

Now, Therefore, This Agreement Witnesseth, that in consideration of the acceptance by Dr. Giannini of the position of Chairman of the Executive Committee of the Board of Directors of the Bank and of the mutual agreement hereinafter set forth, the parties hereto have agreed as follows:

1. The Corporation will use its best efforts to cause the election and/or re-election of Dr. Giannini as a Director and as Chairman of the Executive Committee of the Board of Directors of the Bank to hold such offices for a period of at least three years commencing November 1, 1931, and, subject to the election and/or re-election of Dr. Giannini to such offices during such period, Dr. Giannini will accept such offices during such period and will devote his full time, attention and energy to the due and faithful performance and discharge of the duties of such offices to the best of his ability.

2. The Corporation hereby guarantees the payment to Dr. Giannini by the Bank, for three years from November 1, 1931, of a salary at the rate of \$50,000 per year during such period. The Corporation will pay to Dr. Giannini at the end of each month during such period the amount, if any, by which the aggregate salary paid to Dr. Giannini by the Bank during such month shall be less than

one-twelfth of \$50,000. Any salary received by Dr. Giannini for his services as an officer of any corporation or institution affiliated with the Bank shall, for the purposes of determining the amount, if any, to be paid by the Corporation under this paragraph 2, be deemed to have been paid to Dr. Giannini by the Bank.

3. In the event that Dr. Giannini shall cease to hold the office and discharge the duties of Chairman of the Executive Committee of the Board of Directors of the Bank during such period of three years, because of his death or voluntary resignation, all obligation and liability of the Corporation hereunder shall thereupon cease and determine, except in respect of any amounts payable to Dr. Giannini hereunder to the date when he shall so cease to hold such office and discharge such duties.

4. This Agreement shall inure to the benefit of and be binding upon the Corporation, its successors and assigns, but shall not be assignable in whole or in part by Dr. Giannini.

In Witness Whereof, The Corporation, pursuant to resolution of its Board of Directors, has caused this Agreement to be signed in its name by its proper officers thereunto authorized, and Dr. Gian-

nini has hereunto set his hand and seal this 25th day of November, 1931.

Transamerica Corporation,

/s/ By JEAN MONNET

Vice-Chairman of the Board

Attest:

/s/ J. M. TINKER

Assistant Secretary

/s/ A. H. GIANNINI (L.S.) [320]

On motion duly made and seconded, the following resolution was unanimously adopted:

Resolved that the action of the officers of this Corporation in signing the agreements submitted to this meeting with Mr. Lynn P. Talley and Dr. A. H. Giannini be, and the same hereby is, ratified and confirmed.

The Chairman presented to the meeting a communication to the Board of Directors signed by the Chairman of the Board, the Vice-Chairman and President, consenting to the cancellation of the profit sharing plan authorized by the Board of Directors at a meeting held February 24, 1930. Such communication is as follows:

“Transamerica Corporation

Office of

Chairman of the Board

To: The Board of Directors

Transamerica Corporation

44 Wall Street

New York, N. Y.

Dear Sirs:

In consideration of the execution of similar consents by the other two officers of Transamerica Corporation entitled to participate under the Profit Sharing Plan contained in a resolution adopted by the Board of Directors the Transamerica Corporation at a meeting held February 24, 1930, the undersigned hereby consents to the cancellation and rescission of said resolution and hereby waives all rights thereunder and under said Profit Sharing Plan which has never come into practical operation and under which no payment has ever been made.

Yours truly

(Signed) ELISHA WALKER.”

Similar communications were received from Mr. James A. Bacigalupi and Mr. Jean Monnet, which are as follows:

“Transamerica Corporation
Office of the President

San Francisco, California
December 4, 1931

To: The Board of Directors
Transamerica Corporation
44 Wall Street
New York, N. Y.

Dear Sirs:

In consideration of the execution of similar consents by the other two officers of Transamerica Corporation entitled to participation under the Profit Sharing Plan contained in a resolution adopted by the Board of Directors of Transamerica Corporation at a meeting held February 24, 1930, the undersigned hereby consents to the cancelation and re-cision of said resolution and hereby waives all rights thereunder and under said Profit Sharing Plan which has never come into practical operation and under which no payments have ever been made.

Yours truly,

(Signed) JAMES A. BACIGALUPI.”

[321]

“Transamerica Corporation

San Francisco, California

December 4, 1931

Office of

Vice Chairman of the Board

To: The Board of Directors

Transamerica Corporation

44 Wall Street

New York, N. Y.

Dear Sirs:

In consideration of the execution of similar consents by the other two officers of Transamerica Corporation entitled to participation under the Profit Sharing Plan contained in a resolution adopted by the Board of Directors of Transamerica Corporation at a meeting held February 24, 1930, the undersigned hereby consents to the cancelation and rescission of said resolution and hereby waives all rights thereunder and under said Profit Sharing Plan which has never come into practical operation and under which no payments have ever been made.

Yours truly,

(Signed) JEAN MONNET.”

The Chairman reported to the meeting that Mr. Thomas L. Walker had tendered his resignation as Secretary and Treasurer of the Corporation. He suggested that Mr. L. A. Woolams, Vice-President of the Corporation in charge of its financial matters, be elected as Treasurer and that Mr. J. A. Crooks, Assistant Secretary of the Corporation, be elected as Secretary of the Corporation.

Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

Resolved that the resignation of Mr. Thomas L. Walker as Secretary and Treasurer of the Corporation be, and it hereby is, accepted;

Resolved that Mr. L. A. Woolams be, and he hereby is, elected Treasurer of the Corporation to hold office during the pleasure of the Board of Directors;

Resolved that Mr. J. A. Crooks be, and he hereby is, elected Secretary of the Corporation to hold office during the pleasure of the Board of Directors.

The Chairman submitted to the meeting a statement of the cash and loan position of the Corporation, a copy of which is attached to these minutes. He also reported to the Board that at a meeting of the Board of Directors of Bank of America, N. T. & S. A. (California) held December 8, 1931, the Board of the Bank had determined to omit the declaration of a dividend at this time and to advise its stockholders as to the earnings of the Bank, with a statement that such earnings would be applied to the writing down of value of the Bank premises and other reserves.

The Chairman submitted to the meeting a copy of a communication dated November 27, 1931 from "Associated Transamerica Stockholders" addressed to the stockholders, directors, officers and employees, etc. of Transamerica California banks, which he stated had been mailed to stockholders by "Asso-

ciated Transamerica Stockholders'' since the last meeting of the Board. He also submitted to the meeting a proposed draft of letter from the Board of Directors to the stockholders and also a proposed letter to the stockholders of the Corporation to be signed by himself and Mr. Bacigalupi. He also submitted to the meeting a form of proxy running to a Proxy Committee consisting of Elisha Walker, James A. Bacigalupi, George Murnane, A. Pedrini and C. N. Hawkins. [322]

Such letter of "Associated Transamerica Stockholders" and such proposed letters from the Board of Directors and officers to the stockholders of the Corporation, and such form of proxy are as follows:

[323]

Associated Transamerica Stockholders

456-8 Phelan Building

San Francisco, California

November 27, 1931.

To My Fellow Stockholders:

The Directors, Advisory Board Members, Officers and Other Employees of Transamerica California Banks:

We have been requested by many of those to whom Mr. James A. Bacigalupi, President of Transamerica Corporation, sent a letter under date of November 19, 1931, to express our views concerning the matters referred to therein. If Mr. Bacigalupi's letter were confined to the proper business of the Corporation, it would not be noticed by us. The ill-will and misunderstanding, however, which that

letter was calculated to create, compel us not to ignore it, but to express our views concerning it in writing.

Certain matters mentioned by Mr. Bacigalupi in his letter present rather serious problems to the officers and employees of Transamerica Corporation and its subsidiaries, who have been circularized by him. For that reason we have requested Mr. A. P. Giannini to advise us concerning those matters, and he has done so.

Associated Transamerica Stockholders is composed of stockholders of Transamerica who are friends of Transamerica, and who have given unmistakable evidence that they are interested in doing everything they can to uphold and conserve and extend the business of the institutions referred to by Mr. Bacigalupi. There is no management of a corporation, however powerful or prosperous it may believe itself to be, which can afford to proscribe stockholders and alienate their goodwill. Goodwill always has played an indispensable part in getting and holding profitable business for banks, and always will. Men who have spent years of devoted service in building up these banks cannot conscientiously remain quiet and permit assets to be dissipated and goodwill to be driven away by those now vested with authority. Goodwill built up through twenty-five years of unfailing service, the splendid morale and the fine spirit which brought to the bank its leadership are far more valuable, and the public opinion behind it is far more powerful, than the present management seems to realize.

We deplore the injection of the banks into this controversy between Transamerica stockholders as being not in their best interest and we regret that the management of the banks have unwisely threatened the personnel with reprisals should they not "be on one side of this question only." For the good of the service we want to take advantage of this opportunity to assure you all that we shall indulge in no reprisals against those who are conscientiously and sincerely performing their duty, however the present differences may be determined.

The constructive and co-operative policy which Associated Transamerica Stockholders proposes does not contemplate two hostile groups, one composed of the officers and employees of Transamerica Corporation and its subsidiaries, and the other of the members of our association. Our policy is for all to work with a common spirit and purpose for the advancement of Transamerica for the mutual benefit of all. For this reason Mr. Bacigalupi's letter is out of perspective altogether. We stand squarely upon our letter of November 7, 1931, and in spite of impediments which have been deliberately placed in our way by the management of Transamerica, we are getting more and more facts and instances which show how detrimental Walker's plan is to the stockholders.

Rhetorical references by Mr. Bacigalupi to "old allegiance", "Duty", "Solace", "Old Chief", "Friend", "distressing experience", "Renewed confidence and prestige" are much too shallow to satisfy stockholders who believe that the present unfortu-

nate position of Transamerica stock is due to manipulation, and that the stock market value of the stock has designedly been depressed out of all relation to its real value.

Mr. Bacigalupi sees nothing to condemn, but much to admire in Elisha Walker's executive control. His complacent assent to the Walker program, and his eloquent defense of Walker's actions, which have worked such hardship on the stockholders, emphasize the need, expressed in our letter of November 7, 1931, for "a more adequate representation on the directorate to Western stockholders". [324]

One fact of the past administration stands out unchallengeable in bold contrast to the present management:

The Walker regime has not been successful for the stockholders.

By two decisive criteria we may best decide this question. Dividends which were regularly paid throughout twenty-five years by the former administration were quickly reduced by Walker and finally discontinued. The market value of the stock has steadily declined under Walker's treatment.

Since every stockholder is materially affected by the situation, it is good judgment and sound business procedure for the stockholders to do something constructive to remedy matters. In our letter of November 7, we made this statement with which we feel all fairminded men will agree:

"To do effective work we must have a sufficient number of proxies upon which we can absolutely

count—the policy of the law is to have freedom of voting, and we deplore any arbitrary actions which would limit this basic right to cast your vote in the manner you consider most beneficial to your investment”.

By what right, then does Mr. Bacigalupi take upon himself the authority to issue a ukase in a matter of such vital importance to stockholders. We consider such unwarranted action to be an invasion of the rights of the stockholders. Mr. Bacigalupi demands that no proxies be given “except as requested by the Board of Directors”, which of course means to the Walker regime. We repeat that “it is unfortunate that the men who are your servants should thus assume to be your masters”. If Mr. Bacigalupi’s servile plan were followed, the Board of Directors invariably would perpetuate itself, and stockholders would have no voice in the management of their properties. The unfairness and the unreasonableness of such a policy cannot be tolerated. The right of a majority of the stockholders to discharge Elisha Walker or any other executive and to select others most likely to advance their interests cannot be questioned.

To the remaining matters mentioned by Mr. Bacigalupi in his letter, we are making specific response, based upon information furnished us by Mr. Giannini:

1. Mr. Bacigalupi states that every single one of “our old director associates” favored the adoption of Transamerica’s proposed new plan and voted therefor. We do not know to which former director

associates Mr. Bacigalupi refers. At the June 17, 1931, meeting at which the Walker plan was approved in principle, there were present only twelve directors, all of whom, with possibly one exception, were salaried officers of Transamerica Corporation or affiliated companies. Eighteen directors were absent. From reports of that meeting, Mr. Giannini is convinced that his disapproval of the plan was not fully and fairly presented by Mr. Bacigalupi. At that meeting the Walker plan was approved, form of proxy adopted and notice of special meeting of stockholders, to be held July 21, 1931, authorized to be sent. Following the meeting in a letter dated June 17, 1931, jointly signed by Elisha Walker and Jas. A. Bacigalupi, and in the proxy and notice that accompanied it there is a singular silence about anything relating to the new plan. Why were stockholders kept in the dark. Who more than they were entitled to be informed about and have the opportunity to approve or disapprove a plan which affected their interests so vitally, and deviated so radically from the old established policies.

2. Mr. Bacigalupi states that Mr. Giannini headed a standing committee holding proxies, which he could have used to oust Mr. Walker, had he desired so to do, and that he permitted the situation to remain unchanged. Mr. Bacigalupi fails to mention the fact, however, that out of the committee of five named in the seven-year proxies, which committee he stated Mr. Giannini "headed", three members had been requested to give and had given to

Mr. Walker or his agents an irrevocable substitution of attorneys. Under these circumstances, it is obvious that proxies could have been utilized by Mr. Giannini in opposition to Mr. Walker and his agents.

3. It is true that Mr. Giannini asked Mr. Bacigalupi to take the presidency when requested telegraphically, to do so by a mutual friend and director. At that time, however, Mr. Giannini had not the remotest idea that the new president would become the advocate of policies outlined in the present Walker plan, which deviate so basically from the gospel which Mr. Bacigalupi himself had at all times previously preached with such convincing effect. No objection was made by Mr. Giannini as long as the policies previously enunciated were [325] adhered to, but when he became convinced that the Walker management, in pursuance of its subsequently declared policy, threatened to and actually did begin to dispose of Transamerica assets, at unreasonably low prices, he concluded that he would no longer be justified in remaining silent. The mere circumstance that Mr. Bacigalupi individually believes that Mr. Walker is doing "his best" in the interests of the stockholders presents no reason why the 248,000 stockholders of Transamerica should not organize for the purpose of ascertaining the facts, and after such facts have been ascertained, determining for themselves, regardless of Mr. Bacigalupi's views, whether the policy being pursued is for the best interests of Transamerica and its stockholders.

4. Mr. Bacigalupi attempts to justify the failure to pay dividends upon the ground that the income of Transamerica is being used to pay interest upon an indebtedness which he asserts was created under the former administration and because of losses resulting from the sale of securities in order to reduce such indebtedness. Although Mr. Bacigalupi, at the behest of Mr. Walker, has arbitrarily denied to the stockholders the right of access to the books and records of Transamerica and its subsidiaries, which the stockholders are legally entitled to inspect, and has thereby attempted to prevent the stockholders from knowing what is being done with their property, there are, however, certain indisputable facts which we do know. It appears from Mr. Walker's letter of September 22, 1931, that loans of approximately \$46,000,000 were offset by cash and government bonds to the extent of \$21,000,000. Why the management continued to pay interest on \$46,000,000 instead of disposing of the government bonds, upon which a low rate of interest was being paid, and applying the proceeds of these bonds and the available cash on account of this indebtedness is difficult to understand. During the Walker administration large sums were expended in cash purchases of securities, and new loans and other new commitments substantial in amount were incurred which did not exist under the former administration. At the end of 1929, when the Walker management assumed control, the certified statement filed, at the time of listing, with the New York Stock Exchange showed that Inter-Continental Corporation had ac-

counts payable on December 31, 1929,—the time of Mr. Giannini's actual retirement—of \$12,673,185.20, with securities pledged against same of an aggregate book value of \$21,285,875.73, out of a total investment in stocks and bonds—other than affiliated of \$20,882,426.93—of \$61,805,965.91. On June 30—six months after Mr. Giannini's retirement—only \$8,000,000 was owed. Investment in stocks and bonds alone at that time at market value was \$50,543,790.71. On December 31, 1929, Bankitaly Company of America owed notes payable—secured—of \$22,500,000. Book value of investments in stocks and bonds—other than affiliated of \$265,043,088.11—was \$40,241,238.30. Market value of said securities was approximately \$2,500,000 in excess of carrying value. The above facts indicate that Mr. Bacigalupi's statements regarding loans and dividends are not well founded. Also, it should be remembered that six dividends were paid by the present management. If conditions were as represented by Mr. Bacigalupi, why were these six dividends paid, and why was the following statement made on March 9, 1931, by Walker:

“Your Directors feel that a part of the large surplus resulting from more prosperous periods, but not heretofore paid to stockholders, may be used to a reasonable extent, if necessary, for the continuance of the present regular cash dividends”.

5. With reference to the Bank of America in California, Mr. Bacigalupi states:

“Our policy contemplates the return of this bank to California direct ownership and control”.

Obviously, all stockholders of Transamerica have equal rights, and California stockholders cannot be preferred to stockholders outside of California. At the present time approximately 75% interest in these banks is owned by Californians through their ownership of Transamerica shares. We are opposed to the distribution of any assets through rights. Thousands of stockholders lack the money to exercise such rights, and stockholders should not be asked to buy again assets they already own. We insist that any distribution of assets should be free to stockholders on a pro rata basis.

Mr. Bacigalupi states:

“No disposal of the majority interest . . . will be made”. [326]

Nothing is said, however, regarding the disposal of a minority interest, which itself might effectively control those banks. Even now the stockholders have no assurance respecting the disposition of these banks. Mr. Bacigalupi, in referring to the bank holdings of Transamerica, states:

“These may be disposed of shortly, or it may require a longer time—the banks constitute a very substantial part of all the assets of Transamerica.”

In fact, Mr. Bacigalupi states that “the bank in California is the largest and most valuable asset of Transamerica Corporation.”

In this connection our counsel have advised us that it is the policy of the law, and it is certainly in accord with fair dealing, that the directors of a corporation should not dispose of substantially all of the assets of a corporation without the acquiescence of the stockholders.

There is no advantage apparent to us in the sale to stockholders of the California banks on an asset value basis. They now own their pro rata interest in these banks, and should receive that interest, if distribution becomes necessary, without additional outlay by them. It is purely speculative to allege the possible passage of adverse legislation as a reason why such action should not be taken. Furthermore, it is always possible to dispose of ownership which might conflict with new legislation by a free distribution to stockholders.

The sale by Bancitaly Corporation, of Bank of America, N.A. New York, to its stockholders and stockholders of the Bank of Italy is not comparable with the existing situation. This property was sold at that time because of an arbitrary ruling of a governmental agency, made without legal justification. All of these facts were and are well known to Mr. Bacigalupi and his then associates, who fully concurred and acquiesced in the course then taken. Mr. Giannini has in mind to disclose these facts together with certain other agreements at the proper time and place.

6. In his letter, Mr. Bacigalupi states:

“This stock—Bank of America—is owned by Transamerica Corporation, just as it owns any

other assets, and the stockholders of Transamerica Corporation have only an indirect interest in it or its equivalent."

This statement is typical of the present attitude of the management toward stockholders. Such attitude was emphasized in a statement made by Mr. Bacigalupi in the presence of our counsel at the time when we presented our demand for an inspection of the records of the Corporation, when he said, in substance, that stockholders have no right to inspect the records or to demand information concerning the disposal of the assets of a corporation.

7. The statement contained in Mr. Bacigalupi's letter to the effect that "our new associates have brought renewed confidence and prestige" is difficult to understand, in the light of developments, market-wise and otherwise, occurring since the Walker management took control. Stockholders should have the right, which is accorded them by law, but which is denied by Mr. Bacigalupi, of determining for themselves the policies which should be pursued in the management and disposition of their properties, and of selecting as their representatives those who are sympathetic with such policies.

Before concluding this letter, we believe it proper to advise you that in response to our communication of Nov. 7, Transamerica stockholders have sent, and are now sending to us, thousands of proxies. The situation is known to the present management and fully accounts not only for their endeavor to secure the revocation of these proxies, and thus

enable themselves to be perpetuated in control, but likewise for the writing and transmission to you of the letter of Mr. Bacigalupi. His letter is an attempt to have you persuade the stockholders by whom proxies have already been executed to repudiate their solemn agreement entered into with the proxy committee of Associated Transamerica Stockholders.

Stockholders may fairly demand that the undivided time of employees shall be given to building up the business of the corporation and that executives shall not divert the energies of employees to placing obstacles in the path of stockholders. Above all, they shall refrain from activities which can serve no other purpose than to alienate the goodwill of stockholders and inevitably lead to unhappy consequences.

Sincerely yours,

CHARLES W. FAY,
Chairman. [327]

Confidential.

Transamerica Corporation

December 9, 1931.

To the Stockholders of
Transamerica Corporation:

In connection with the enclosed letter to stockholders from the Board of Directors with reference to "Associated Transamerica Stockholders", and in view of the attack upon the policies of the present management by this group, your officers take this opportunity to communicate to all stockholders in-

formation which we have already given to some in answer to inquiries, and which we believe, will make it clear that stockholders, for their own good, should support the present Board of Directors which is responsible for the management of the Corporation.

I.

In its letter, your Board of Directors states again the reasons for adopting the policy of ultimately disposing of the shares of stock in the banks controlled by Transamerica, namely that it is essential to the complete success of a bank that it should be operated and publicly regarded as an independent institution without responsibility for, or connection with, any other business. In order that there may be no misunderstanding, we wish to emphasize, as previously announced, that no plan for disposing of Transamerica's holdings of stock of Bank of America N. T. & S. A. (California) will be adopted without a vote of the stockholders of Transamerica at a meeting called for that purpose, nor will Transamerica stockholders be asked to vote on any plan until they have had an opportunity fully to inform themselves regarding it at the time of its submission. Pending the approval of any such plan, the Corporation will not dispose of any of its holdings in the stock of that Bank.

II.

In the recent communication from "Associated Transamerica Stockholders", reference is made to salaries and compensation of officers. It is proper

to state the following for the information of stockholders.

(1) The present officers of the Corporation and its subsidiaries are receiving and have received during the period of the present administration only nominal salaries, commensurate with the duties and responsibilities of their respective offices, and are receiving and have received no bonus, profit sharing or other special or unusual payments or compensation. The salaries of the Chairman of the Board and the Vice-Chairman were arranged by Mr. A. P. Giannini before he retired in February 1930, and are, respectively, \$100,000 and \$50,000 a year. Mr. Bacigalupi, who became President after the retirement of Mr. L. M. Giannini in March 1931, is receiving a salary of \$60,000 a year.

(2) The only record of extraordinary compensation relates to Mr. A. P. Giannini. In 1927, the Board of Directors of Bancitaly Corporation, predecessor of Transamerica, adopted a resolution approving the payment to Mr. Giannini, as President of Bancitaly Corporation, of 5% of the profits each year. This arrangement was not continued after the formation of Transamerica Corporation, but presumably based upon his claim to such a percentage of the profits of Bancitaly Corporation, there was placed to Mr. Giannini's credit from the cash funds of Bancitaly Corporation or of Transamerica or its subsidiaries, during the three year period 1927-1930 no less than \$3,700,000. This sum does not include the \$1,500,000 given at Mr. Giannini's request by Bancitaly Corporation to the Uni-

versity of California to establish the Giannini Foundation and for the building of Giannini Hall. Of said \$3,700,000, \$2,400,000 was placed to his credit between December 20, 1929 and January 21, 1930, after the stock market crash and immediately before his retirement from active service with the Corporation. All of said \$3,700,000 has been withdrawn by, or paid upon the order of, Mr. A. P. Giannini, except an unpaid balance of \$792,000 which in September of this year Mr. Giannini demanded and which the present Board of Directors, on the advice of counsel, has refused to pay. The Board has sought the advice of eminent counsel regarding the legality of the payments made to Mr. Giannini.

III.

The recent communication of "Associated Trans-america Stockholders" refers to the right of stockholders to full information regarding the affairs of their Corporation. It will be remembered that during Mr. A. P. Giannini's administra- [328] tion, when he held seven-year proxies from holders of a majority of the stock, stockholders were furnished with only the most meager reports which did not explain the Corporation's financial position. The management which succeeded Mr. Giannini determined to change these methods. One of their first acts was to employ Messrs. Ernst & Ernst, certified public accountants, to make a thorough study of the Corporation's affairs. After receiving the report of these accountants, the Board of Directors issued to stockholders their full statement

dated July 12, 1930, which was the first official statement adequate to enable stockholders to form their own opinion as to the value of their property. At the same period the Board of Directors caused the shares of the Corporation to be listed on the New York Exchange, with whom they entered into an agreement to publish audited annual statements to stockholders.

IV.

The spokesman for the "Associated Transamerica Stockholders" calls attention to the decline in the market value of Transamerica stock which had progressed far during Mr. Giannini's regime and has continued during the administration of the present management. Some of the causes of this decline are as follows:

1. The decline followed the nation-wide decline of security prices and especially of the shares of investment companies.

2. The absence of accurate information regarding the Corporation during the former administration resulted in surrounding the stock with mystery which doubtless contributed to its rise during the years of generally rising prices but operated in contrary fashion to bring down the price of the stock when the market turned.

3. The fact that when the entire market began to decline at the end of October, 1929, the Corporation under Mr. Giannini's direction maintained Transamerica at a high and artificial level from which it fell rapidly when the support was removed. During the four weeks ending October 28, 1929,

over \$68,000,000 was expended by the Corporation in the purchase, on balance of over 1,090,000 shares of Transamerica stock at an average cost of \$62.50 per share. This policy of attempting to hold the price of Transamerica stock, when the prices of all other securities were dropping rapidly left the Corporation at the end of 1929 with a serious reduction in quick assets and with large indebtedness. Another result of that artificial and costly attempt of Transamerica to peg the market value of its own stock was to give speculators and market operators an opportunity of selling their stock to the Corporation at high prices, while loyal stockholders, uninformed of the situation, suffered great losses. Those who sold during this period profited, while those who remained loyal shared in the loss to the Corporation resulting from the purchases of Transamerica stock. Following the stock market crash in the fall of 1929, the Corporation faced a difficult future. It was at this point that Mr. Giannini retired.

V.

The charge that the fall of the value of Transamerica stock is due to manipulation and sales by persons associated with the present management is not true. Your Chairman wishes to point out to stockholders that since he became your chief executive officer he has been the largest holder of Transamerica stock and that he has never sold a single share of his holdings or in any way speculated in the stock, directly or indirectly.

VI.

The "Associated Transamerica Stockholders" refer to the dividend policy during Mr. Giannini's regime and the reduction and later the suspension of dividends, which occurred prior to the election of the present Board. The dividend policy during Mr. Giannini's regime was made possible by the appreciation in securities generally during an exceptional period of rising prices. Such dividend policy was bound to end upon the advent of the period of rapidly declining prices which began in the fall of 1929 and has continued until the present time. Mr. Giannini's retirement coincided with the beginning of the period of declining prices, since which time the principal source, and indeed almost the only source, of income for individuals has been the current income [329] on the Corporation's investments. Your Board's decision to interrupt the payment of dividends was a wise and necessary measure to conserve the Corporation's cash resources in order to provide for the reduction of the Corporation's large floating debt, chiefly caused, as pointed out above, by the large purchases of Transamerica shares at high prices during Mr. Giannini's regime.

VII.

The suggestion that your Board of Directors is disposing of the Corporation's assets unwisely is incorrect. The merger of The Bank of America N. A. (New York) with The National City Bank of New York, which has recently been consummated by virtue of an overwhelming vote of the share-

holders of both banks, is most beneficial to Transamerica stockholders. As a result of this merger, Transamerica now owns, in place of 63% of the stock of The Bank of America N. A. (New York), a very substantial interest in The National City Bank, one of the largest banks of the world. This merger should materially increase the value of this investment. Based on relative dividends currently paid at the time of the merger it will result in a material increase in the income from this investment.

VIII.

It is true, as stated by the "Associated Transamerica Stockholders", that the asset values given in the circular of the present Board under date of September 22 differs from the book values published two years earlier. The change is due to the fact that the Corporation's investments in controlled banks and other subsidiaries had been previously carried at the cost thereof at a time when prices were materially higher than today, while the revised statement on which the letter of September 22 was based, gives the net asset value of the subsidiaries regardless of their cost and after eliminating all value for good will and providing substantial reserves. The latest statement was made in this form in order that stockholders might have reliable and unvarnished information regarding the net asset value of their investment.

IX.

The Board of Directors aims to improve the

condition of the properties in their charge and to place the enterprise on a sound and conservative basis. Definite progress has already been made in that direction which should make possible the resumption of dividends as soon as general conditions will permit.

Stockholders are earnestly urged, in their own interest, to support the present Board of Directors of the Corporation, and to sign and return the enclosed proxy, without delay, in the enclosed envelope.

If, after reading this letter, you have any doubt as to what action you should take, you are urged, in your own interest, to consult any bank or banker of standing in your community.

Yours sincerely,

ELISHA WALKER JAMES A. BACIGALUPI

[330]

Confidential.

Transamerica Corporation.

December 9, 1931.

To the Stockholders of
Transamerica Corporation:

A committee calling themselves "Associated Transamerica Stockholders", sponsored by Mr. A. P. Giannini, have, through circular letters which your Board regards as inaccurate and misleading, criticized the management of your Corporation and its policies and have asked for proxies.

The recently elected members of your Board accepted their positions with the definite purpose of

supporting the management in carrying out the policies announced in the letter to stockholders dated September 22, 1931, and all members of the Board have unqualifiedly endorsed these policies.

Your attention is called to the following:

(1) In the September letter, the present Board clearly stated its position and plans, which include the complete separation of its controlled banks from the other activities of Transamerica. Your Board believes that it is unsound to link, through a holding company, the ownership and control of a bank with other unrelated activities, and that it is essential to the complete success of any bank that it should be operated and publicly regarded as an independent institution without responsibility for, or connection with, any other business. It was for this reason that your Board announced in September the policy of confining the Corporation's investments in the banking field to minority interests not involving controlling influence. The eventual separation of Bank of America N. T. & S. A. (California) from the control by Transamerica, in accordance with this policy, will give the Bank complete independence in its lending and investment policies, which is the only sound foundation for a bank.

(2) Your Board has determined that the Corporation will not dispose of any of its holdings in the stock of Bank of America N. T. & S. A. (California), except in accordance with a plan which shall have first been approved by Trans-

america stockholders at a meeting called for the purpose.

(3) The present management has furnished to stockholders frank and adequate reports and audited statements of the conditions and affairs of the Corporation which had never previously been made available. In order that stockholders might be informed as to the asset value of their investment, your Board published figures in September showing the net assets values of the Corporation's holdings after eliminating all value for good will and providing for necessary reserves.

(4) The present management has materially reduced the heavy short-time debt of the Corporation inherited from the former administration.

(5) The interruption of the payment of dividends was a necessary and conservative measure to conserve the Corporation's cash resources in order further to reduce such debt.

(6) Your Board has arranged for the merger of The Bank of America N. A. (New York) with The National City Bank of New York, as a result of which your Corporation's holdings in the former Bank have been exchanged for a substantial interest in The National City Bank, one of the leading banking institutions in the country. Your Board believes this change will materially increase the value of this investment.

(7) Your Board has returned to stockholders the former seven-year proxies running to Mr. Giannini and his associates, in order to restore to stockholders the freedom of voting to which they are entitled.

(8) Your Directors feel that the management has made definite progress toward putting the affairs of your Corporation on a sound and conservative basis.

(9) As any continued controversy between shareholders is detrimental to a corporation, your Board has decided to amend the by-laws to advance the next annual meeting for the election of directors to February 15, 1932 (instead of [331] March 31, 1932), at which time stockholders may determine whether they wish to support the present Board or one chosen by Mr. Giannini and his associates. This change of date will not invalidate proxies already properly signed.

(10) Stockholders are requested to indicate their support of the present Board of Directors by signing and returning the enclosed proxy in the enclosed envelope without delay. This proxy, when signed, automatically revokes any proxy previously given, even if such proxy be by its terms irrevocable. No proxy is irrevocable. The last proxy supersedes all previous ones.

(11) If, after reading this letter, you have any doubt as to what action you should take, you are urged, in your own interest, to consult any bank or banker of standing in your community.

By Order of the Board of Directors

JAMES A. BACIGALUPI

President.

ELISHA WALKER

Chairman [332]

3642—December 9, 1931—D

Transamerica Corporation

Proxy For Annual Meeting of Stockholders

Know All Men By These Presents, that the undersigned stockholder of Transamerica Corporation, a Delaware corporation (hereinafter called a Corporation), does hereby make, constitute and appoint Elisha Walker, James A. Bacigalupi, George Murnane, A. Pedrini and C. N. Hawkins the true and lawful attorneys and proxies, and each of them the true and lawful attorney and proxy, of the undersigned, with full power of substitution, for and in the name, place and stead of the undersigned, to attend the next annual meeting of stockholders of the Corporation to be held at the office of the Corporation, No. 100 West Tenth Street, Wilmington, Delaware, on February 15, 1932, at ten o'clock in the forenoon, Eastern Standard Time, or at such other time and place as may be stated in the notice of such meeting, and any meeting or meetings held in lieu of or in substitution for said annual meeting, or any adjournment or adjournments of any of said meetings, and thereat to vote the number of votes or shares of stock the undersigned would be entitled to vote if then personally present, for the election of directors of the Corporation for the ensuing year and on any and all matters which may be referred to in any notice or notices of any such meeting or which may properly come before any such meeting, or any adjournment or adjournments thereof, as fully and with the same effect as the undersigned might or

could do if personally present at any such meeting or at such adjournment or adjournments thereof, hereby ratifying and confirming all that said attorneys and proxies, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof, and hereby revoking all proxies to vote said shares heretofore given for any purpose whatsoever to any person or persons whomsoever. If more than one of the above named attorneys and proxies shall be present and voting in person or by substitute at any such meeting, or at any adjournment or adjournments thereof, the majority of the attorneys and proxies so present and voting, either in person or by substitute, shall exercise all the powers hereby given. This Proxy Confers No Power To Vote Or Consent With Respect To Any Plan For The Disposition By The Corporation Of The Shares Of Capital Stock Owned Or Controlled By It In Bank Of America N. T. & S. A. (California).

In Witness Whereof, the undersigned has executed this proxy under seal this.....day of
..... A. D. 193....

..... (L.S.)

(Signature of Stockholder)

Note: Stockholders should sign the proxy and return the same in the enclosed envelope. The signature should correspond with the name of the stockholder as it appears below. A proxy to be executed by a corporation should be signed in its name by its President or other officer duly authorized to sign the name and its corporate seal

should be affixed and attested by its Secretary or other proper officer. [333]

Thereupon, after full discussion and consideration, on motion duly made and seconded, the following resolutions were unanimously adopted:

Resolved that the letter from the Board of Directors to the stockholders of this Corporation, dated December 9, 1931, and the form of proxy to be enclosed therewith in the forms which have been submitted to this meeting be, and they hereby are, approved, and the proper officers of this Corporation be, and they hereby are, authorized to mail such letter and proxy to the stockholders of the Corporation in substantially such form;

Resolved that Messrs. Elisha Walker, James A. Bacigalupi, George Murnane, A. Pedrini and C. N. Hawkins be, and they hereby are, appointed as the Proxy Committee named in the form of proxy approved by the foregoing resolution, to receive and vote such proxies for the purposes therein set forth;

Resolved that the Board of Directors hereby approves mailing the proposed letter from Messrs. Elisha Walker and James A. Bacigalupi to stockholders in substantially the form submitted to this meeting in the same envelope with the letter from the Board of Directors to stockholders approved at this meeting.

The Chairman read to the meeting a draft of proposed letter to be sent to stockholders by the former executive and director associates of A. P. Giannini which draft letter is as follows: [334]

Letterhead of
Transamerica Corporation.

San Francisco, California

December 9, 1931.

To The Stockholders Of Transamerica Corporation:

We, who were the executive and director associates of Mr. A. P. Giannini in the Bank of Italy, N. T. & S. A., Bancitaly Corporation and/or Transamerica Corporation, feel compelled to publicly inform stockholders of Transamerica of our position at the present time.

We feel that we have full knowledge of the facts and we are convinced that Mr. A. P. Giannini's attacks on the present management are misleading and detrimental to your Corporation.

We desire to call your attention to the following:

1. The present management was invited to assume the direction of Transamerica Corporation by Mr. A. P. Giannini.

2. The policies of the present management have been and are supported by all former Transamerica director associates of Mr. Giannini and responsible banking and business leaders in California and the country.

3. The new directors of your Corporation are national business leaders of the highest reputation and integrity.

4. The sole opposition to the policies of your present Board is by Mr. A. P. Giannini, his son, Mr. L. M. Giannini and the "Associated Trans-

america Stockholders'', of which Mr. A. P. Giannini is the Adviser.

We unanimously endorse the policies announced by your Board as the only policies, in our opinion, suitable for and adapted to the successful management of Transamerica Corporation, the Bank of America, N. T. & S. A. (California) and the institutions controlled by and affiliated with Transamerica.

Stockholders are urged to support the policies of the present Board of Directors.

Very truly yours, [335]

It was the sense of the meeting that it was desirable that such a letter should be sent to stockholders. The meeting discussed the necessity of following up the letters to stockholders by personal communication with stockholders with a view to have as many shares as possible represented at the annual meeting in person or by proxy, it being the sense of the meeting that more results could be expected from such solicitation than from the letters themselves.

There being no further business to come before the meeting, it was, on motion duly made and seconded, adjourned.

DONALD C. SWATLAND

Acting Secretary

ELISHA WALKER

Chairman [336]

Transamerica Corporation

Office of
Chairman of the Board

To: The Board of Directors,
Transamerica Corporation,
44 Wall Street,
New York, N. Y.

Dear Sirs:

In consideration of the execution of similar consents by the other two officers of Transamerica Corporation entitled to participate under the Profit Sharing Plan contained in a resolution adopted by the Board of Directors of Transamerica Corporation at a meeting held February 24, 1930, the undersigned hereby consents to the cancellation and rescission of said resolution and hereby waives all rights thereunder and under said Profit Sharing Plan which has never come into practical operation and under which no payments have ever been made.

Yours truly,

ELISHA WALKER [337]

Transamerica Corporation

Office of the President

San Francisco, California,

December 4, 1931.

To: The Board of Directors,
Transamerica Corporation,
44 Wall Street,
New York, N. Y.

Dear Sirs:

In consideration of the execution of similar consents by the other two officers of Transamerica Corporation entitled to participation under the Profit Sharing Plan contained in a resolution adopted by the Board of Directors of Transamerica Corporation at a meeting held February 24, 1930, the undersigned hereby consents to the cancelation and recision of said resolution and hereby waives all rights thereunder and under said Profit Sharing Plan which has never come into practical operation and under which no payments have ever been made.

Yours truly,

JAMES A. BACIGALUPI [338]

Transamerica Corporation

Office of

Vice Chairman of the Board

San Francisco, California,

December 4, 1931.

To: The Board of Directors,
Transamerica Corporation,
44 Wall Street,
New York, N. Y.

Dear Sirs:

In consideration of the execution of similar consents by the other two officers of Transamerica Corporation entitled to participation under the Profit Sharing Plan contained in a resolution adopted by the Board of Directors of Transamerica Corporation at a meeting held February 24, 1930, the undersigned hereby consents to the cancelation and re-cision of said resolution and hereby waives all rights thereunder and under said Profit Sharing Plan which has never come into practical operation and under which no payments have ever been made.

Yours truly,

(ILLEGIBLE) [339]

Transamerica Corporation

Oath of Secretary

State of New York

City and County of New York—ss.

I, J. A. Crooks, being duly sworn, do hereby promise and swear that I will faithfully discharge

the duties of Secretary of Transamerica Corporation, a Delaware corporation, to the best of my ability and understanding.

J. A. CROOKS

Subscribed and sworn to before me this 16th day of December, 1931.

JOHN KRAUS

Notary Public, Queens County. Queens Co. Clks.

No. 3830 Reg. No. 5837 N. Y. Co. Clks. No.

1118 Reg. No. 2K24A Kings Co. Clks. No. 258

Reg. No. 2416. Commission Expires March 30,

1932. [340]

CONDENSED STATEMENT OF CASH POSITION

(Including Estimated Forward Position to February 29th, 1932)

At Close of Business December 8, 1931

Cash in Banks

San Francisco,

Bank of America, NT & SA (Corporation of America)	\$ 805,000.
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Bank of America, NT & SA (Inter-Continental Corp.)	900,000.
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Bank of America, NT & SA (Transamerica Savings)	400,000.
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Chicago,

Continental Illinois Bank and Trust Company.....	452,000.
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First National Bank of Chicago	252,000.
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Portland,

First National Bank of Portland	111,000.
---------------------------------------	----------

Boston,

First National Bank of Boston	156,000.
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New York,

National City Bank	\$ 1,033,000.
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Chemical Bank and Trust Company	489,000.
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Chase National Bank	566,000.
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Bankers Trust Company	126,000.
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Guaranty Trust Company	255,000.
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First National Bank of New York.....	171,000.	
Lee, Higginson & Company	250,000.	
Irving Trust Company	265,000.	
Commercial National Bank	118,000.	
Chatham Phenix National Bank.....	12,000.	3,285,000.
<hr/>		
Total.....		\$ 6,361,000.

CASH CAPACITY OPENING DECEMBER 9th, 1931

Immediate Cash	\$ 6,361,000.
<hr/>	
Free Securities	\$ 42,000.
<hr/>	

December 9th

Disbursements

Advance to Intercoast Sales Corporation.....	6,000.
<hr/>	
	\$ 6,355,000.

Dec. 31

Deduct—Excess of Disbursements over Receipts

December 10th, to December 31st.....	1,775,000.
<hr/>	
Available close of business December 31st.....	\$ 4,580,000.

Jan. 31

Add—Excess of Receipts over Disbursements

January 1st to January 31st	1,936,000.
<hr/>	
Available close of business January 31st.....	\$ 6,516,000.

Feb. 29

Deduct—Excess of Disbursements over Receipts

February 1st to February 29th	62,000.
<hr/>	
Available close of business February 29th.....	\$ 6,454,000.
<hr/>	

Notes:

Amounts not included above—payable dates unknown :

- 1 Cash Value of Intercoast Sales Corporation Net

Assets	\$ 1,310,000.
<hr/>	

(Inter-Continental Corporation Investment and
Advances total \$1,899,000.)
- 2 Special Fund #1 (Payable to A.P.G.).....\$ 792,000.
- 3 Minority Interest in Bank of America of Cali-
fornia

	\$ 38,000.
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4	In addition to anticipated advances to California Lands, Inc. provided for in above statement further advances in June 1932 are estimated to be required of approximately	\$ 500,000.
5	Liquidating Dividend of Farm Mortgage Holding Company, including portion applicable against loans to Stewart	\$ 885,000.
6	Balance in Bank of America, N.T. & S.A. Transamerica Savings account shown above is held subject to Capital Company requisition of all or part thereof at some future date.....	\$ 400,000.
7	Loans to be taken over from California State Life Insurance Company (\$287,000. in April 1932 and \$20,000. in June 1932).....	\$ 307,000.
		[341]

INTER-CONTINENTAL CORPORATION

Loans and Securities

At Close of Business December 8, 1931.

	Amount of Loan	Value of Collateral	Collateral Value Required	Excess Collateral
Domestic Banks				
Chase	\$ 5,950,000.	\$ 7,840,000.A	\$ 7,840,000.	\$
Chemical	1,350,000.	2,067,000.A	2,067,000.	
Continental	4,575,000.	6,201,000.A	6,201,000.	
First National, Boston	700,000.	958,000.A	904,000.	54,000.
First National, Chicago	1,600,000.	2,056,000.A	2,000,000.	56,000.
Guaranty	1,000,000.	1,400,000.A	1,312,000.	88,000.
National City	5,075,000.	6,461,000.A	6,386,000.	75,000.
<hr/>				
Total Domes- tic Banks	\$20,250,000.	\$26,983,000.	\$26,710,000.	\$273,000. ¹
<hr/>				
Transamerica International Corp.				
	\$ 1,374,000.	\$ 2,435,000.	\$ 2,435,000.	
<hr/>				
Total Loans	\$21,624,000.	\$29,418,000.	\$29,145,000	
<hr/> <hr/>				

¹ All National City and Bancamerica-Blair Corporation.

	Amount of Loan	Value of Collateral	Collateral Value Required	Excess Collateral
Free Securities				
New York	\$	42,000.		\$ 42,000.
		<hr/>		<hr/>
Net Excess or Free				\$315,000.

Free Securities—Non Collateral

New York	\$	683,000.A
San Francisco		151,000.A
Foreign		306,000.
		<hr/>
		\$ 1,140,000.

Total All Securities\$30,600,000.

Deduct:

(A) Other Holding Companies Securities in
Loans and Free.....\$14,215,000.

Value of Inter-Continental, Coast Company and
Transamerica International Securities\$16,385,000.

National City Bank, N.Y.

Free (192,544 shares
at 47)\$ 9,049,568.

Bancamerica-Blair Corp.

Free (311,240 shares
at 1)\$ 311,240.

[Endorsed]: Filed April 21, 1943. [342]

Securities and Exchange Commission
Washington

Securities Exchange Act of 1934

Release No. 1950

United States of America, Before the Securities
and Exchange Commission

At a regular session of the Securities and Exchange
Commission, held at its offices in the City of
Washington, D. C., on the 22nd day of Novem-
ber, A. D., 1938.

In the Matter of
Proceeding under Section 19 (a) (2) of the Secu-
rities Exchange Act of 1934, as amended, to
determine whether the registration of

TRANSAMERICA CORPORATION
CAPITAL STOCK, \$2 PAR VALUE

should be suspended or withdrawn

ORDER FOR HEARING AND DESIGNATING
OFFICER TO TAKE TESTIMONY

File No. 1-2964

[343]

For Immediate Release Friday, November 25,
1938.

It appearing to the Commission that Transamer-
ica Corporation is the issuer of Capital Stock, \$2
par value, and that said Transamerica Corporation
registered 11,590,784 shares of such stock on the
New York Stock Exchange, the Los Angeles Stock

Exchange, and, by amendment, on the San Francisco Stock Exchange, all national securities exchanges, by filing on or about August 7, 1937, an application on Form 24 signed for the Corporation by John M. Grant, President, with the said exchanges and with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended, and pursuant to Rule JB1 (now Rule X-12B-1) as amended, promulgated by the Commission thereunder, which application became effective September 10, 1937; and

The Commission having reasonable grounds to believe that Transamerica Corporation has failed to comply with the provisions of Section 12(b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24 and the Instructions thereto, promulgated by the Commission thereunder, in that the application for registration on Form 24 and the amendments thereto, filed by said Corporation contain false and misleading statements of material [344] facts, including financial statements of said Corporation and its subsidiaries, which do not correctly reflect the true financial condition of the Corporation and its subsidiaries, all as hereinafter more particularly set forth;

The false and misleading statements which the Commission has reasonable grounds to believe exist in the application on Form 24 and the amendments thereto being more particularly as follows:

I. Item 4(b) and Item 11, Col. G call for certain information with respect to all parents of the registrant. The Instructions to Form 24 define the term "parent" to include a person in control of the

registrant and the term "control" is defined to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

The Commission has reasonable grounds to believe that in 1934 general proxies, to remain in full force and effect, unless revoked, for a term of seven years, were delegated to a Committee composed of A. P. Giannini, John M. Grant and L. M. Giannini, that such proxies were voted at the annual meeting of stockholders on March 29, 1934, and were in effect at the date of the application on Form 24, and that at such date these proxies conferred upon A. P. Giannini, John M. Grant and L. M. Giannini the power to direct the management and policies of the registrant. It therefore appears to the Commission that the failure in Item 4(b) and Item 11, Col. G to disclose the committee composed of A. P. Giannini, John M. Grant and L. M. Giannini as a parent of the registrant constitutes an omission of a material fact.

II. Item 28 and Item 29 call for information with respect to the remuneration paid by the registrant and its subsidiaries to certain of its officers, directors and employees.

The Commission has reasonable grounds to believe that on January 20, 1930, the sum of \$1,400,000 was placed on the books of Bankitaly Company of [345] America (then a subsidiary of Transamerica Corporation) to the credit of A. P. Giannini; that of this \$1,400,000 all but \$792,000 had been paid to A. P.

Giannini, by September, 1931, at which time counsel for the then existing management of Transamerica Corporation advised that further payment would be illegal; that thereafter subsequent to the change in management in 1932, A. P. Giannini withdrew from the balance of \$792,000 the following sums:

1932	.....	\$134,826.58
1933	.....	132,896.92
1934	.....	100,596.24
1935	.....	251,952.03
1936	.....	65,914.28

It appears to the Commission that the failure to disclose these facts in Items 28 and 29 renders registrant's response to these items materially misleading.

III. With respect to the "Balance Sheet" of Transamerica Corporation as of December 31, 1936—

A. In Schedule VI the figure \$1,171,714.56 is set forth as a charge to "Paid-In Surplus" in 1936 under the caption "Charge resulting from cancellations and redistribution of capital stock."

The Commission has reasonable grounds to believe that of this amount \$1,124,724.78 represents commissions and other monies paid by Transamerica Corporation to Associated American Distributors, Inc. (at that time a wholly-owned subsidiary of Inter-Continental Corporation which was itself a wholly-owned subsidiary of Transamerica Corporation), in connection with the following activities:

From 1934 to April 1937, Associated American Distributors, Inc. engaged in the business of solicit-

ing orders to purchase Transamerica Corporation stock on the various stock exchanges on which such stock was listed. It does not appear that in any case Associated American Distributors, Inc. solicited orders for the [346] purchase of capital stock held by Transamerica Corporation. The solicitations were effected by means of contracts entered into by Associated American Distributors, Inc. with independent dealers and through a large number of salesmen employed directly by Associated American Distributors, Inc. Associated American Distributors, Inc. paid commissions to the dealers and to its salesmen for the orders obtained and, to encourage retention of the stock so purchased, additional commissions were paid in proportion to the duration of "placements." To support these activities, Transamerica Corporation paid the following amounts to Associated American Distributors, Inc.: In 1934, \$336,857; in 1935, \$891,202.17; in 1936, \$1,124,724.78. These payments were treated by Associated American Distributors, Inc. as current earnings and were set up on its books as income in the years received.

In the light of the facts set forth above, it appears to the Commission that the commission and other monies paid to Associated American Distributors, Inc., in the amount of \$1,124,724.78 in 1936, represents a current expense properly chargeable to profit and loss and that registrant's treatment of this item as a charge to "Paid-In Surplus" and its failure to reflect this item as a current expense with a consequent reduction in "Earned Surplus" renders the "Balance Sheet" and Schedule VI materially misleading.

IV. With respect to the "Profit and Loss Statement" of Transamerica Corporation—

A. Schedule VI sets forth as charges to "Paid-In Surplus" under the caption "Charge resulting from cancellations and redistribution of capital stock" the figures \$495,152.72 in 1934, \$891,202.17 in 1935 and \$1,171,714.56 in 1936.

The Commission has reasonable grounds to believe that of these figures \$336,857 in 1934, \$891,202.17 in 1935, and \$1,124,724.78 in 1936 represent commissions and other monies paid by Transamerica Corporation to Associated American Distributors, [347] Inc. (then a wholly-owned subsidiary of Inter-Continental Corporation which was itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A. In the light of the facts and for the reasons set forth above in paragraph III-A, it appears to the Commission that registrant's treatment of these items renders the profit and loss statements for 1934, 1935, and 1936 materially misleading.

V. With respect to the "Balance Sheet" of Inter-America Corporation as of December 31, 1936—

A. Under the caption "Reserves—For liability and possible loss under outstanding contract of guaranty", and in Schedule V relating to additions and charges to "Reserves", there is set forth the figure \$9,302,381.82. The accompanying Note states that this amount relates to a contract of guaranty given to Bank of America N.T. and S.A. in connection with certain assets of the Bank.

The Commission has reasonable grounds to believe that certain facts having a material bearing on this matter are as follows:

In 1931, in the course of an examination of Bank of America N.T. & S. A., the national bank examiners classified certain assets of the Bank in the face amount of approximately \$35,214,000 as losses and doubtful accounts of such unsatisfactory character as to require their elimination from the Bank's balance sheet. Under three contracts dated June 26, 1931, December 31, 1931, and February 13, 1932, Bank of America N.T. & S.A. and Corporation of America (both of which were at that time 99.65% owned by Transamerica Bank Holding Company, itself a wholly-owned subsidiary of Transamerica Corporation), entered into agreements which provided that Bank of America N.T. & S. A. "agrees to sell, transfer and set over and does hereby sell, transfer and set over to the Corporation, and the Corporation agrees to purchase and does hereby purchase from the Bank" all such assets. As consideration [348] for these assets, Corporation of America agreed to pay the face amount of \$35,214,000. To secure performance Corporation of America pledged with the Bank the assets purchased together with additional collateral. Corporation of America failed to give effect on its books to the assets acquired by these contracts of purchase and sale or to reflect any direct liability thereunder, but apparently treated the obligation arising under the contracts as a guaranty by setting up a reserve from capital surplus in an amount approximately equal

to the aggregate purchase price under the contracts.

In 1933, the three contracts were transferred to Transamerica Bank Holding Company, and Transamerica Bank Holding Company by a resolution of its Board of Directors, dated August 30, 1933, agreed to "assume all of the obligations of Corporation of America under those three certain contracts between said Corporation of America and Bank of America N.T. & S.A." In connection with this transfer, Corporation of America eliminated the reserve set up to cover its obligation under the contracts, then aggregating approximately \$34,994,-376.57, and a reserve in the same amount appeared on the books of Transamerica Bank Holding Company. At a "Special Stockholders Meeting" on April 20, 1935, the name of Transamerica Bank Holding Company was changed to Inter-America Corporation. From time to time Bank of America N. T. & S. A. reduced the item set up on its books to reflect the obligation of Inter-America Corporation under the three contracts by a write-up of unrelated assets and by various other means as set forth below under paragraphs VII to XI, and XV to XVII, both inclusive.

In the light of the facts set forth, it appears to the Commission that the items "Reserves—For liability and possible loss under outstanding contract of guaranty" together with the accompanying Note, Schedule V, and the "Balance Sheet" are materially misleading:

1. In treating the contracts described and the obligation of Inter-America Corporation thereunder as a guaranty rather than as a purchase and sale

which should have been recorded by setting up the assets purchased with a corresponding direct liability for the purchase price and, in view of the character of the assets, a reserve for the losses which would be borne by Inter-America Corporation; [349]

2. In that the amount set up as "Reserves" for this obligation does not reflect the true amount of the liability due nor the possible losses under the contracts;

3. In the use of the term "recoveries" in Schedule V as charges to the "Reserve" originally set up to cover Inter-America's obligation under the three contracts, in that the term "recoveries" fails to indicate and falsifies the true nature of the reduction of Inter-America's obligation by conveying the impression of actual cash recoveries on assets written down, whereas in fact the "recoveries" were accomplished by the write-up by Bank of America N. T. & S. A. of unrelated assets as set forth below in paragraphs VII to XI and XV to XVII, both inclusive.

VI. With respect to the "Balance Sheet" of Transamerica General Corporation as of December 31, 1936—

A. Under the caption "Investments in Securities of Affiliates" and in Schedule II there is set forth the figure \$8,982,180.20 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia.

The Commission has reasonable grounds to believe that certain restrictions imposed by the Italian

Government upon the transfer of any profits or other funds from Italy to any other country materially affects this investment. It therefore appears to the Commission that it is materially misleading to set forth the figure \$8,982,180.20 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia without indicating the effect that the restrictions referred to above may have upon the investment.

VII. With respect to the "Combined Report of Condition" of Bank of America N. T. & S. A., First National Bank in Reno, Bank of America (California) as of December 31, 1936—

A. The item "Loans and discounts" under "Assets" and in Schedule E is stated to be \$539,899,100.65. This figure includes, among other things, loans in the amount of \$304,674,551.73 on "farm lands" and "other real estate." The Commission has [350] reasonable grounds to believe that the item of \$539,899,100.65 includes estimated losses and doubtful accounts aggregating in excess of \$8,000,000 and slow accounts in excess of \$125,000,000 held by Bank of America N. T. & S. A. Registrant has failed to disclose these losses, doubtful items and slow accounts in the "Report of Condition", either in Schedule E or elsewhere in the registration statement, has failed to provide any reserve for such losses and doubtful accounts, and, in the supplementary data furnished in accordance with paragraph I(5) of the Instructions as to Financial Statements in the Instruction Book for Form 24,

has affirmatively stated that there are no losses on loans and discounts not provided for.

B. "United States Government obligations, direct and/or fully guaranteed" and "Other bonds, stocks and securities" are set forth under "Assets" and in Schedule F and Schedule G at \$478,019,-771.38 and \$175,078,108.60, respectively. The Commission has reasonable grounds to believe that these items include United States Government and Municipal securities held by Bank of America N. T. & S. A. which were written up in 1935 and 1936 to the extent of approximately \$14,000,000 and which at the date of the "Report of Condition" included an unrealized appreciation of approximately \$9,000,000. The registrant has failed to disclose this fact in either Schedule F, Schedule G, the supplementary data furnished in accordance with paragraph I(5) of the Instruction Book for Form 24, or elsewhere in the registration statement.

The only provision for a reserve, captioned "Reserve for contingencies", is set at \$2,049,928.01. The Commission has reason to believe that \$1,971,058.48 of this figure is applicable to Bank of America N. T. & S. A., and that of this \$1,971,058.48, approximately \$1,460,000 is a reserve for self-insurance. The Commission further has reason to believe that this reserve is misleading because of its inadequacy— [351]

1. In failing to provide for losses and doubtful accounts of Bank of America N. T. & S. A. other than loans on "farm lands" and "other real estate" included in the "Assets" to the extent of approximately \$8,000,000;

2. In failing to provide sufficient reserves for the \$304,674,551.73 of loans on "farm lands" and "other real estate";

3. In failing to provide for losses on real estate other than bank premises held by Bank of America N. T. & S. A. to the extent of approximately \$1,600,000;

4. In failing to provide sufficient depreciation for bank premises, furniture, and fixtures of Bank of America N. T. & S. A.;

5. In failing to provide for losses on bonds and other securities held by Bank of America N. T. & S. A. to the extent of approximately \$400,000 and for losses on other asset items to the extent of approximately \$300,000.

D. "Undivided profits—net" is set forth at \$22,503,612.05. The Commission has reasonable grounds to believe that this figure is false and misleading—

1. In that it includes approximately \$9,000,000 of unrealized appreciation resulting from the \$14,000,000 write-up in 1935 and 1936 of United States and Municipal securities held by Bank of America N. T. & S. A.;

2. In failing to include a reserve for losses and doubtful accounts, losses on real estate, depreciation of bank premises, furniture and fixtures of Bank of America N. T. & S. A. and losses on securities and other assets in excess of \$13,000,000;

3. In that the total of (1) and (2) would wipe out that portion of the "Undivided profits—net" which may be attributed to Bank of America N. T.

& S. A. and would require a reduction of the "surplus" account of Bank of America N. T. & S. A.

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VIII. With respect to the "Combined Report of Earnings and Dividends" for Bank of America N. T. & S. A., First National Bank in Reno and Bank of America (California)—

A. For the year ended December 31, 1935—

1. The items "Recoveries on bonds, stocks and other securities" and "Profits on securities sold" are stated to total \$14,942,992.67. The Commission has reason to believe that this figure includes unrealized appreciation of approximately \$7,000,000 resulting from an approximately \$8,000,000 write-up in 1935 of United States Government and Municipal securities held by Bank of America N. T. & S. A., and, in addition, includes a substantial amount of unrealized appreciation resulting from the write-up of certain Transamerica Corporation stock held by Bank of America N. T. & S. A. as collateral for written off loans, and that the inclusion of this unrealized appreciation as income is false and misleading;

2. The provision for loss and depreciation on "banking house, furniture and fixtures" is set at \$1,055,223.40. The Commission has reason to believe that this figure is inadequate;

3. The deficiencies set forth in (1) and (2) are reflected in the statement of net profits and undivided profits and render these items false and misleading to an amount in excess of \$7,000,000. It appears that the dividends paid in 1935 by Bank of

America N. T. & S. A. were more than \$3,500,000 in excess of its actual current earnings.

B. For the year ended December 31, 1936—

1. The item "Recoveries on bonds, stocks and other securities" is stated to be \$6,309,400.26. The Commission has reasonable grounds to believe that this figure includes unrealized appreciation of approximately \$2,000,000 resulting from a \$6,000,000 write-up in 1936 of United States Government and Municipal securities held by Bank of America, N. T. & S. A., and, in addition, includes a substantial amount of unrealized appreciation resulting from the write-up of certain Transamerica Corporation stock held by Bank of [353] America N. T. & S. A. as collateral for written off loans, and that the inclusion of this unrealized appreciation as income is false and misleading;

2. The report of Earnings and Dividends further appears misleading in that no provision from earnings has been made for doubtful accounts and uncollectible foreign credits held by Bank of America N. T. & S. A. which the Commission has reasonable grounds to believe aggregated approximately \$3,700,000;

3. The provision for losses and depreciation on "banking house, furniture and fixtures" is set at \$1,082,748.86. The Commission has reasonable grounds to believe that this figure is inadequate.

4. The deficiencies set forth in (1), (2) and (3) are reflected in the statement of net profits and undivided profits and render these items false and misleading to an amount in excess of \$6,000,000. It ap-

pears that the dividends paid in 1936 by Bank of America N. T. & S. A. were more than \$1,500,000 in excess of its actual current earnings.

IX. With respect to the "Balance Sheet" of California Lands, Inc., as of December 31, 1936—

A. Schedule VII relating to "Surplus" sets forth as an addition to "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" the sum of \$297,918.26. The accompanying Note states that this amount represents the excess of realization over the cost to California Lands, Inc. of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N. T. & S. A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by California Lands, Inc.

The Commission has reason to believe that certain facts having a material bearing on this matter are as follows: [354]

On February 1, 1933, Bank of America N. T. & S. A. sold to Corporation of America (both of which were at this time 99.65% owned by Transamerica Bank Holding Company, itself a wholly-owned subsidiary of Transamerica Corporation), for a consideration of \$250,000, all of the Bank's charged off assets, including those to be charged off up to July 1, 1933. This agreement was transferred for the same consideration to Transamerica General Corporation and then to Transamerica Bank Holding Company (both wholly-owned subsidiaries of Transamerica Corporation). On January 2, 1934,

Bank of America N. T. & S. A. sold to Transamerica Bank Holding Company for a consideration of \$50,000 all of the assets of the Bank charged off from July 1, 1933, to July 1, 1937. At a Special Stockholders Meeting on April 20, 1935, the name of Transamerica Bank Holding Company was changed to Inter-America Corporation.

On October 1, 1936, Inter-America Corporation transferred the charged off assets covered by the two aforementioned agreements to California Lands, Inc. and Capital Company (both wholly-owned subsidiaries of Transamerica General Corporation which corporation was 100% owned by Transamerica Corporation) for an aggregate consideration of \$500,000.

On July 14, 1937, California Lands, Inc. and Capital Company transferred these same assets less \$1,486,185.67 collected by Inter-America Corporation (for the account of California Lands, Inc. and Capital Company) to Bank of America N. T. & S. A. for a consideration of \$6,500,000. Thus, in 1937, Bank of America N. T. & S. A. paid \$6,500,000 for a portion of the same assets which the Bank had originally sold in 1933 and 1934 for \$300,000.

As part of this same transaction, Transamerica Corporation entered into an agreement guaranteeing the Bank against loss to the extent of \$6,500,000 on the charged off assets repurchased.

In the light of the facts set forth above, it appears to the Commission that the figure \$297,918.26 set forth in Schedule VII as "Earned Surplus" under [355] the caption "Profit on sale of assets pur-

chased from affiliate", together with the accompanying Note, and the inclusion of this amount in the "Earned surplus—deficit" in the "Balance Sheet" are materially misleading.

X. With respect to the "Balance Sheet" of Capital Company as of December 31, 1936—

A. Schedule VII relating to "Surplus" sets forth as an addition to "Earned Surplus" as "Profit on sale of assets purchased from affiliate" the sum of \$297,919.29. The accompanying Note states that this amount represents the excess of realization over the cost to Capital Company of an undivided one-half interest in certain notes, parts of notes, deficiency judgment, etc.,—theretofore written off on the books of Bank of America N. T. & S. A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by Capital Company.

In the light of the facts sets forth above under paragraph IX-A, it appears to the Commission that the figure \$297,919.23 set forth in Schedule VIII as "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

It appearing to the Commission that pursuant to Section 13 (a) and (b) of the Securities Exchange Act of 1934, as amended, and Rules KA1 and KA2 (now Rules X-13A-1 and X-13A-2) promulgated by the Commission thereunder, Transamerica Corporation filed on or about June 27, 1938, its annual report on Form 24-K for the fiscal year ended De-

cember 31, 1937, signed for the Corporation by John M. Grant, President; and

The Commission having reasonable grounds to believe that said Transamerica Corporation has failed to comply with the provisions of Section 13 (a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulation, Form 24-K and the Instructions thereto, promulgated by the Commission thereunder, in that the annual report on Form 24-K filed by said Transamerica Corporation contains false and misleading statements of material facts including financial statements of said Transamerica Corporation and its subsidiaries, which do not correctly reflect the true financial condition of the Corporation and its subsidiaries, all as hereinafter more particularly set forth; [356]

The false and misleading statements which the Commission has reasonable grounds to believe exist in the annual report referred to above being more particularly as follows:

XI. With respect to the "Balance Sheet" of Transamerica Corporation as of December 31, 1937—

A. Note B referring to the items captioned "Marketable Securities" and "Investments in Securities of Affiliates" states that securities having a market value of \$1,338,835 and investments in securities of affiliates having a carrying value of \$5,636,576.32 were pledged as security "(1) in connection with a contract of guarantee and (2) on an option to purchase certain securities." Note I referring to "Contingent Liabilities" states that "At December

31, 1937, the Corporation was reported as being continently liable [sic] under certain conditions of contract in the amount of \$3,838,128.74."

1. The Commission has reasonable grounds to believe that certain additional facts having a material bearing on the "contract of guarantee" referred to in Note B are as follows:

In connection with the transactions described above under paragraph IX-A, in which a portion of the charged off assets of Bank of America N. T. & S. A., originally sold by the Bank in 1933 and 1934 for an aggregate consideration of \$300,000, were repurchased by the Bank on July 14, 1937, from California Lands, Inc. and Capital Company for a consideration of \$6,500,000, Transamerica Corporation entered into an agreement guaranteeing the Bank against loss to the extent of \$6,500,000 on the assets repurchased. The reference in Notes B and I to a "contract of guarantee" apparently refers to this agreement.

In the light of the facts set forth above in this paragraph and in paragraph IX-A, and in the light of the apparent disparity between the actual value of the assets repurchased by the Bank and the amount of recovery guaranteed by Transamerica Corporation, it appears to the Commission that Notes B and I and the "Balance Sheet" are grossly inadequate to reflect the nature of Transamerica's obligation under the contract of guarantee. [357]

2. The Commission has reasonable grounds to believe that certain additional facts having a material bearing on the "option to purchase certain securities" referred to in Note B are as follows:

In July, 1937, Bank of America N. T. & S. A. purchased from Transamerica Corporation 56,600 shares of stock of National City Bank at the then market price of \$48 per share. It appears that the stock purchased was set up on the books of Bank of America N. T. & S. A. at \$2,716,800, the purchase price, and that payment was made by crediting \$2,716,800 to Inter-America Corporation to reduce by that amount the balance of the \$35,214,000 obligation originally undertaken by Inter-America Corporation under the circumstances set forth in paragraph V-A. As part of the contract of purchase and sale of National City Bank stock, Transamerica Corporation agreed to repurchase the stock at \$48 per share over a period of 5 years at the rate of 11,320 shares each year, and pledged an additional block of 18,400 shares to secure this agreement. It further appears that on December 31, 1937, the market value of National City Bank stock was approximately \$27 per share. The reference in Note B to "an option to purchase certain securities" apparently relates to this transaction.

It appears to the Commission that the foregoing transaction was a device employed in an attempt to reduce or eliminate the balance of the obligation originally undertaken by Inter-America Corporation, and that the designation and treatment of this transaction as an "option" and the failure to disclose the additional information set forth above and the circumstances surrounding this transaction render Notes B and I and the "Balance Sheet" materially misleading.

B. In Schedule VIII the figure \$444,000 is set forth as a charge to "Paid-In Surplus" in 1937 under the caption "Contribution to Associated American Distributors (Incorporated) in connection with redistribution of capital stock."

The Commission has reasonable grounds to believe that this amount represents commissions and other monies [358] paid by Transamerica Corporation to Associated American Distributors, Inc., (then a wholly-owned subsidiary of Inter-Continental Corporation which was a wholly-owned subsidiary of Transamerica General Corporation, itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A.

In the light of the facts and for the reasons set forth above in paragraph III-A, it appears to the Commission that registrant's treatment of this item renders the "Balance Sheet" and Schedule VIII materially misleading.

XII. With respect to the "Profit and Loss Statement" of Transamerica Corporation—

A. In Schedule VIII the figure \$444,000 is set forth as a charge to "Paid-In Surplus" in 1937 under the caption "Contribution to Associated American Distributors (Incorporated) in connection with redistribution of capital stock."

The Commission has reasonable grounds to believe that this amount represents commissions and other monies paid by Transamerica Corporation to Associated American Distributors, Inc., (then a wholly-owned subsidiary of Inter-Continental Cor-

poration which was a wholly-owned subsidiary of Transamerica General Corporation, itself a wholly-owned subsidiary of Transamerica Corporation) in connection with the activities described above in paragraph III-A.

In the light of the facts and for the reasons set forth in paragraph III-A, it appears to the Commission that registrant's treatment of this item renders the "Profit and Loss Statement" and Schedule VIII materially misleading.

XIII. With respect to the "Balance Sheet" of Inter-America Corporation as of June 30, 1937—

A. Under the caption "Reserves—For liability and possible loss under outstanding contract of guaranty", and in Schedule VI relating to additions and charges to "Reserves", there is set forth the figure \$8,561,099.82.

In the light of the facts set forth above under paragraph V-A, it appears to the Commission that the items "Reserves—For liability and possible loss under outstanding contract [359] of guaranty", Schedule VI, and the "Balance Sheet" are materially misleading:

1. In treating the contracts described in paragraph V-A and the obligation of Inter-America Corporation thereunder as a guaranty rather than as a purchase and sale which should have been recorded by setting up the assets purchased with a corresponding direct liability for the purchase price, and, in view of the character of the assets, a reserve for the losses which would be borne by Inter-America Corporation;

2. In that the amount set up as "Reserves" for this obligation does not reflect the true amount of the liability due nor the possible losses under the contracts;

3. In the use of the term "recoveries" in Schedule VI as charges to the "Reserves" originally set up to cover Inter-America's obligation under the three contracts, in that such term fails to indicate the true nature of the reduction of Inter-America's obligation.

XIV. With respect to the "Balance Sheet" of Transamerica General Corporation as of December 31, 1937—

A. Under the caption "Investments in Securities of Affiliates—Banks" there is set forth the figure \$9,374,148.06. In Schedule II it is stated that the investment in the capital stock of Banca d'America e d'Italia is carried on the balance sheet at the amount of \$8,982,321.85.

In the light of the facts set forth above under paragraph VI-A, it appears to the Commission that it is materially misleading to set forth the figure \$8,982,321.85 as the carrying value of the investment in the capital stock of Banca d'America e d'Italia without indicating the effect that the restrictions referred to in paragraph VI-A may have upon investment.

XV. With respect to the "Balance Sheet" of California Lands, Inc., as of December 31, 1937—

A. Schedule IX relating to "Surplus" sets forth as an [360] addition to "Earned Surplus" under the caption "Profit on sale of assets purchased

from affiliate" the sum of \$3,595,120.54. The accompanying Note states that of this amount \$345,120.54 represents the excess of realization over the cost to California Lands, Inc. of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N. T. & S. A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by California Lands, Inc., and that the remaining \$3,250,000 represents the share of California Lands, Inc. in \$6,500,000, which on July 14, 1937, Bank of America N. T. & S. A. agreed to pay to California Lands Inc. and Capital Company for the right to future recoveries on these same assets. The Note further states that in connection with this purchase Transamerica Corporation entered into an agreement whereby it guaranteed that the Bank would recover the amount of \$6,500,000 at an annual rate of \$1,300,000.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure \$3,595,120.54 set forth in Schedule IX as "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

XVI. With respect to the "Balance Sheet" of Capital Company as of December 31, 1937—

A. Schedule IX relating to "Surplus" sets forth as an addition to "Earned Surplus" under the cap-

tion "Profit on sale of assets purchased from affiliate" the sum of \$3,595,119.56. The accompanying Note states that of this amount \$345,119.56 represents the excess of realization over the cost to Capital Company of an undivided one-half interest in certain notes, parts of notes, deficiency judgments, etc., theretofore written off on the books of Bank of America N. T. & S. A. and purchased from the Bank by Inter-America Corporation and from Inter-America Corporation by Capital Company, and that the remaining \$3,250,000 represents the share of Capital Company in \$6,500,000 which on July 14, 1937, Bank of America N. T. & S. A. agreed to pay to California Lands, Inc. and Capital Company for the right to future recoveries on these same assets. The Note further states that in connection with this purchase Transamerica [361] Corporation entered into an agreement whereby it guaranteed that the Bank would recover the amount of \$6,500,000 at an annual rate of \$1,300,000.

In the light of the facts set forth above under paragraph IX-A, it appears to the Commission that the figure \$3,595,119.56 set forth in Schedule IX as "Earned Surplus" under the caption "Profit on sale of assets purchased from affiliate" together with the accompanying Note, and the inclusion of this amount as "Earned Surplus" in the "Balance Sheet" are materially misleading.

The Commission having reasonable grounds to believe that Transamerica Corporation has failed to comply with the provisions of Section 12(b) and

Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations, Form 24, Form 24-K, and the Instructions thereto, promulgated by the Commission thereunder, in that the application for registration on Form 24, the annual report on Form 24-K and the amendments thereto, filed by said Transamerica Corporation contain financial statements of Transamerica Corporation and its subsidiaries, which do not correctly reflect the true financial condition of Transamerica Corporation and its subsidiaries, as hereinafter more particularly set forth:

XVII. It appears to the Commission that the general policy of Transamerica Corporation and its subsidiaries with respect to the manner of creation and treatment of certain "reserves", and the adequacy thereof, is improper in the following respects:

A. In the elimination of "reserves" on the books of certain companies and the creation of fictitious "reserves" in similar or substantially similar amounts on the books of other companies in the Transamerica group for the purpose of utilizing such "reserves" to absorb losses with consequent distortion of the true financial condition of the separate corporate entities and of the entire group as a whole; in particular, with respect to the "reserves" set up on the "Balance Sheets" of Transamerica General Corporation as of December 31, 1936, and December 31, 1937, "for real estate losses and contingencies of controlled affiliates" in the amounts of \$6,861,814.19 in 1936 and \$1,700,050.22

in 1937, and \$5,034,583.95 in 1936 and \$1,168,002.25 in 1937, for Capital Company and California Lands, Inc. respectively; [362]

B. In that the amount of the reserves provided on the books of the various companies in the Transamerica group is materially inadequate; in particular, the "Combined Report of Condition" of Bank of America N. T. & S. A., First National Bank in Reno, and Bank of America (California) as of December 31, 1936, shows "Loans and discounts" in the amount of \$539,899,100.65 which includes, among other things, loans in the amount of \$304,674,551.73 on "farm lands" and "other real estate". The only reserve in this "Combined Report of Condition" is designated as "Reserve for contingencies" and is set forth at \$2,049,928.01, of which approximately \$1,460,000 is a reserve for self-insurance, leaving a balance of \$589,928.01. In its "Balance Sheet" as of December 31, 1936, Capital Company carried "Real Estate Held for Resale," at \$51,379,652.11, which amount represented "Land, Buildings and Improvements", and as of the same date, California Lands, Inc. carried "Real Estate and Equipment Held for Resale" at \$31,357,098.76, which amount included "Land, Buildings and Improvements" at \$31,335,825.76, with no reserve on the books of either company applicable to such assets. As of the same date, Occidental Life Insurance Company (a wholly owned subsidiary of Transamerica General Corporation, itself a wholly owned subsidiary of Transamerica Corporation) showed on its books

“mortgage loans on real estate” and “balance due on property sold under contract” in the amounts of \$8,175,516.57 and \$3,856,986.03, respectively, with no reserves applicable thereto. These various items of loans, discounts, and investments in real estate aggregate \$634,668,354.12, against which there is an aggregate reserve of but \$589,928.01.

In that because of the nature of the “reserves” referred to above under A, it was improper to charge losses and expenses against such “reserves”;

C. In the treatment of losses and expenses which were not present at the date of a readjustment of accounts but resulted from events occurring subsequent thereto as charges to certain reserves created at the time of such readjustment. [363]

XVIII. It further appears to the Commission that registrant, in its application for registration on Form 24 and in its annual report for 1937 on Form 24-K, has failed to file financial statements for itself and its subsidiaries certified in accordance with the requirements of paragraph II of the Instructions as to Financial Statements in the Instruction Books for Form 24 and Form 24-K, respectively.

It being the opinion of the Commission that the hearing herein ordered to be made is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Securities Exchange Act of 1934, as amended;

It Is Ordered, pursuant to Section 19(a)(2) of said Act, that a public hearing be held to determine whether Transamerica Corporation has failed to

comply with Section 12(b) and Section 13(a) and (b) of the Securities Exchange Act of 1934, as amended, the rules, regulations and forms promulgated by the Commission thereunder, in the respects set forth above; and if so, whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months or to withdraw the registration of said Corporation's Capital Stock, \$2 par value, on said New York Stock Exchange, Los Angeles Stock Exchange and San Francisco Stock Exchange;

It Is Further Ordered, pursuant to the provisions of Section 21(b) of the Securities Exchange Act of 1934, as amended, that for the purposes of such hearing, Henry Fitts, an officer of the Commission, is hereby designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law;

It Is Further Ordered, that the taking of testimony in this hearing begin on the 16th day of January, 1939, at 10:00 A.M. in Room 1101, Securities and Exchange Commission Building, 1778 Pennsylvania Avenue, N. W., Washington, D. C. and continue thereafter at such time and place as the officer hereinbefore designated may determine.

By the Commission.

[Seal]

FRANCIS P. BRASSOR,
Secretary. [364]

State of California,

County of Los Angeles—ss.

Homer N. Boardman, being first duly sworn says: That affiant is a citizen of the United States and a resident of the County of Los Angeles, is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 9720 Sunset Boulevard, Beverly Hills, California; that heretofore on or about the 21st day of August, 1942, affiant served the within and attached "Order for Hearing and Designating Officer to Take Testimony, file No. 1-2964" made and given by the United States Securities and Exchange Commission, on the 22nd day of November, 1938, in that certain proceeding entitled "In the Matter of Proceeding under Section 19 (a) (2) of the Securities Exchange Act of 1934 as amended to determine whether the registration of Transamerica Corporation capital stock \$2.00 par value should be suspended or withdrawn" on the attorneys for all of the defendants in the case of Rose Papantonio vs. Amadeo P. Giannini, et al, No. 1490-H, pending in the District Court of the United States Southern District of California, Central Division, by placing a true copy thereof in an envelope addressed to said attorneys at their respective business addresses as follows: Keyes & Erskine, Herbert W. Erskine and Louis Ferrari, at 625 Market Street, San Francisco, California; Bascigalupi Elkus and Salinger and Claude M. Rosenberg at 300 Montgomery Street, San Francisco, California; Tanner, Taft and O'Dell at 1011 I. N. Van Nuys Bldg., 210 W. 7th

Street, Los Angeles, California; Edmund Nelson, Room 410, Bank of America Bldg., 650 South Spring Street, Los Angeles, California; Russ Avery at 315 South Broadway, Los Angeles, California; Gordon Gray at Bank of America Building, San Diego, California; George G. Schilling and G. L. Berrey at Room 410 Bank of America Bldg., 650 South Spring Street, Los Angeles, California and Cosgrove & O'Neil and John N. Cramer, Rowan Bldg., 458 South Spring Street, Los Angeles, California, all of which said envelopes containing said copy and addressed to said attorneys as heretofore stated were sealed and the postage fully prepaid thereon and thereafter, on Friday, August 21, 1942, deposited by affiant in the United States Post Office at Beverly Hills, California, and that there is delivery service by United States mail at each of the places so addressed and that there is regular communication by mail between the place of mailing and each of the places so addressed.

HOMER N. BOARDMAN

Subscribed and sworn to before me, this May 29th, 1943.

CHAS. E. [Illegible]

Notary Public, Los Angeles
County, Calif.

My Commission expires May 9, 1946.

[Endorsed]: Filed May 31, 1943. [365]

In the United States District Court Southern
District of California, Central Division

No. 1490-H

ROSE PAPANTONIO, suing in her own behalf as
a shareholder¹ of TRANSAMERICA COR-
PORATION and in behalf of all other share-
holders of said corporation similarly situated,
Plaintiff,

vs.

AMADEO P. GIANNINI, L. M. GIANNINI,
A. H. GIANNINI, AMADEO P. GIANNINI
(as Executor of the Last Will and Testament of
VIRGIL D. GIANNINI, Deceased), BANK
OF AMERICA NATIONAL TRUST & SAV-
INGS ASSOCIATION, a national banking as-
sociation (as Administrator With the Will An-
nexed of the Estate of JOHN M. GRANT, De-
ceased), GORDON GRAY, O. D. HAMLIN,
T. W. HARRIS, A. P. JACOBS, F. G.
STEVENOT, RUSS AVERY, P. A. BRICCA,
GEORGE J. DeMARTINI, W. N. LAGOMAR-
SINO, A. J. SCAMPINI, WILLIAM E.
BLAUER, LEON BOCQUERAZ, E. H.
CLARK, CHARLES N. HAWKINS, W. F.
MORRISH, A. J. MOUNT, ALFRED E.
SBARBORO, CHESTER H. LOVELAND,
P. C. HALE, JAMES A. BACIGALUPI,
ARMANDO PEDRINI, GEORGE A. WEB-
STER, E. J. NOLAN, C. R. BELL, W. W.
GARTHWAITE, GEORGE N. ARMSBY,

LOUIS FERRARI, V. SCIALOJA, THEODORE M. STUART, HERBERT E. WHITE, CHARLES DeY. ELKUS, and CHARLES DeY. ELKUS, WILLIAM S. HOELSCHER, CLIFFORD F. HOFFMAN, C. J. SMITH, VERNON C. WALSTON, AMADEO P. GIANNINI, L. M. GIANNINI, and CLAIRE GIANNINI HOFFMAN, transacting business as co-partners under the firm name and style of WALSTON & CO., and AMADEO P. GIANNINI (as the Executor of the Last Will and Testament of VIRGIL D. GIANNINI, a deceased member of said co-partnership); WALSTON & CO., a co-partnership; TRANS-AMERICA CORPORATION, a corporation, et al.,

Defendants. [366]

JUDGMENT AND DISMISSAL

Plaintiff having filed her Second Amended Complaint herein pursuant to the order of the court directing her so to do, defendants, separately or in groups, filed motions directed at said Second Amended Complaint, to wit, motions to dismiss; for an order requiring plaintiff to separately state causes of action in separate counts; for a more definite statement or bill of particulars, and to strike, and the same were argued by counsel and submitted upon such oral argument and written points and authorities theretofore and thereafter filed in support of and in opposition to said motions. The court having duly considered said motions and being

fully advised in the premises, on April 16, 1943, filed its Memorandum of Conclusions, and on the same day made its minute order directing that each and all of the motions filed on behalf of the respective defendants to dismiss the Second Amended Complaint be granted, and further ordering that on or before June 1, 1943, plaintiff might file application for leave to file a Third Amended Complaint, provided that such application have attached thereto her proposed further amended pleading, and also be accompanied by a memorandum of supporting points and authorities, and provided further that at least ten days' notice shall be given of the hearing of said application.

It appearing to the court that plaintiff has not filed her application for leave to file a further amended pleading, nor has she asked for or obtained any extension of time therefor, and that the time within which to file such application has now expired.

Now, Therefore, It Is Ordered, Adjudged and Decreed that the action as above entitled be and the same is hereby dismissed.

It Is Further Ordered and Decreed that defendants do [367] have and recover of and from plaintiff their respective costs herein to be taxed by the Clerk in the manner prescribed by law and the rules of this court. Taxed at \$30.00.

Dated, June 9, 1943.

H. A. HOLLZER

District Judge

Approved as to form pursuant to Rule 8.

VINCENT ANTHONY MARCO

HOMER N. BOARDMAN

PERCY V. CLIBBORN

By HOMER N. BOARDMAN

Attorneys for Plaintiff

Judgment entered Jun. 9, 1943. Docketed Jun. 9, 1943. C. O. Book 17, Page 467. Edmund L. Smith, Clerk, By Wayne Thomas, Deputy.

[Endorsed]: Filed Jun. 9, 1943. [368]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
OF APPEALS UNDER RULE 72 (b). [369]

Notice is hereby given that Rose Papantonio suing in her own behalf as a share holder of Transamerica Corporation and in behalf of all other shareholders of said corporation similarly situated, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 9th day of June, 1943.

VINCENT ANTHONY MARCO

HOMER N. BOARDMAN

PERCY V. CLIBBORN

Attorneys for appellant, Rose Papantonio, suing in her own behalf as a shareholder of Trans-

america Corporation and in behalf of all other shareholders of said corporation similarly situated. [370]

[Endorsed]: Filed and mailed copies to attorneys for drafts, Sep. 7, 1943. Edmund L. Smith, Clerk. By Theodore Hocke, Deputy.

[Title of District Court and Cause.]

PORTIONS OF REPORTER'S TRANSCRIPT
OF PROCEEDINGS ON HEARING DESIGN-
NATED BY APPELLEES

The plaintiff and appellant hereinafter sets forth each and all of the portions and parts of the reporter's transcript of the proceedings on the hearings before the court which were stenographically reported and which have been designated by the appellees for use in the Appellate Court in printing the record and for use of said appellees.

Said parts and portions of said reporter's transcript are as follows:

I.

Los Angeles, California, Tuesday, June 23, 1942;
10:00 A. M.***5 Afternoon Session
2:00 O'Clock*** [371]

II.

Mr. Cramer:***

If the court please, I think that I have taken far more time than I expected on my motion to dismiss.

I want to say this: I think that what we have said will materially shorten our rebuttal and also some other of my motions. I am now prepared, if it meets the court's convenience, to argue very briefly the second of our motions, namely, the motion for a separate statement of transactions; and if it meets the court's approval, I will——

The Court: As to that motion, perhaps I ought to interrupt and ask the other side: Will it be conceded that some of the directors, if liable at all, may be liable with respect to the so-called salary transaction and may not be liable with respect to one or both of the remaining transactions?

Mr. Boardman: If your Honor please, I would not wish to go so far as to agree with that observation. The complaint when what we consider properly viewed, in effect charges a conspiracy between all of the defendants and, of course, if any one of them aided in any part of it they adopted it all at the beginning, even though they aided at the last end of it. Under that theory I would not want to admit or concede that there might be parts of this, some of the items involved in the counts, where certain defendants would be liable and not in others. But I will say that, as far as the motion to separate is concerned which, of course, is purely a matter of form, we have no objection, if the court wishes it stated that way, to separate them. We are not contesting that particular thing. We are leaving it up to the court to determine.

The Court: Yes. Well, I think, then, I should

settle that now. I think they ought to be separated.

Mr. Boardman: Well, that will end that.

The Court: Because, while it is conceivable that it may ultimately be held that all defendants are liable on some [372] theory of conspiracy with reference to matters taking place before they became directors, it is also conceivable that at a trial quite a different result might follow.

Mr. Boardman: They might be separated; that is correct.

The Court: That disposes of everything except the matters of more particularly setting forth certain features.***66-67

III.

Mr. Ferrari***

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IV.

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We have also made a motion for a separate statement and a motion to strike. The theory of the motion for a separate statement was that we defendants——

The Court: We have already ruled favorably on that.

Mr. Ferrari: Yes. Yes; and I am not going to discuss it. My motion to strike was simply to strike out those causes of action of the complaint which occurred before my clients were directors and those that happened after they ceased to be such, and I could not see any answer to that motion to strike. And therefore, on behalf of my defendants, we submit that they are entitled to have this motion to dismiss granted, without leave to amend. They should not be haled into court again.

The Court: I am probably asking something that goes outside the record, but it occurs to me that it may be of some aid in considering the redrafting the complaint. I am laboring, at least, under the impression that somewhere in the years past we read a news item to the effect that the so-called A. P. Giannini group were ousted from control of Trans-america and some other group came in. I recognize that I have no right, of course, to make any ruling upon these motions based upon what I read in the newspapers, but it just occurred to me that, so far as possible, all these legal questions ought to be clearly and squarely presented on the face of the pleadings if this can be done; and [373] having in mind that there are these contentions being advanced on behalf of the respective defendants that center around portions of the complaint bearing on this matter of the alleged domination of Mr. A. P. Giannini of the board and, furthermore, the inability of plaintiff, to use a slang phrase, to get a square deal from the board thus dominated, if it be a fact *there* there was a period of time when the directors were elected by the so-called opposition, as I believe the newspapers reported. I think it only—well, appropriate, if these questions are to be tested at the outset of the case, that in explaining the reasons why this delay has taken place, why nothing has been done for the benefit of Trans-america and the stockholders, that whatever the essential facts are—not in detail, obviously not—but something, I think, should be said that would help to explain the failure to bring a lawsuit of that

kind during, say, a period when the so-called opposition was in control of the board, if that is the proper term to use. It is true that such matters could be raised by way of answer and one might wait until trial to test them out; but if it be a fact, as we have been led to believe by the newspapers, that there was a period of time when the so-called dummy directors acting at behest, allegedly, of Mr. A. P. Giannini, were not in control of Transamerica I think that circumstance should not only be disclosed in the bill as amended, but, of course, a recital of the ultimate facts upon which the plaintiff was justified and the failure of Transamerica to act during that period.

Is there any disagreement about the accuracy of that news item?

Mr. Ferrari: I will state, if the court please, for the benefit of counsel that that is a fact; that during the period from 1929, as shown in the chart, Transamerica was dominated by the so-called Walker directors. They were not only not dominated by Mr. Giannini, but they were absolutely hostile to him, [374] and this whole question of the compensation came up before that hostile board of directors, was considered and they decided that the arrangement should not be disturbed and that the contract should not be set aside.

The Court: Now, of course, you have gone beyond answering my question. I was only concerned with the fact about the change in the board because the complaint itself, I think—

Mr. Ferrari: I was just giving facts.

The Court: —is raising an issue as to who were the directors and whether or not they were dominated by Mr. A. P. Giannini; and if it be a fact, which perhaps plaintiff's counsel can verify, that the so-called A. P. Giannini crowd was ousted and that control of the directorate was acquired by another group, it might just as well be disclosed in the amended bill; and then, whatever you think is appropriate to justify the failure of the so-called opposition board to act on behalf of Transamerica.

Mr. Boardman: We will be glad, your Honor, to investigate that matter and take care of it in the amended complaint in conformity with the facts.

The Court: Do you recall reading a news item?

Mr. Boardman: No; I do not. I was not interested in the Gianninis at that time

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V.

Los Angeles, California, Thursday, June 25, 1942;
10:00 A. M.

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VI.

Afternoon Session. 2:00 O'Clock

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VII.

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The Court: The comments I am about to make constitute tentative views and do not represent any final conclusion that I have reached. I make them so that, I hope, as to assist counsel in determining what, if any, further comments should be made on their part; in other words, to apprise you as to what

is pre- [375] sently passing through my mind. It is quite obvious that, not having made that exhaustive study which must ultimately be made of the case, I may be convinced that these tentative views should be altered. In other words, as yet, in the light of the argument so far as it has progressed, these thoughts seem to me to express the conclusions that might ultimately be reached.

It is to be observed that in Paragraph I of the complaint it is disclosed that Transamerica was organized in October of 1928. Turning now to Paragraph XX, it is there shown that such defendants as are sued herein as having been former directors or who are now directors of Transamerica, for the most part did not become such until 1929, although in a few instances some of them became directors about the same time that Transamerica was organized in 1928. Nevertheless, in Paragraph XXI it is alleged that the defendants A. P. Giannini, L. M. Giannini and Mr. Grant, now deceased, during all times mentioned in the complaint—it may be there has been a clerical misprision but the expression is unqualified—“all of the times mentioned” in the complaint selected the officers and directors of Transamerica, controlled and dominated its business policies and affairs. Perhaps that should be construed as meaning at all times from and after the organization of Transamerica.

Paragraph XXII of the complaint discloses that Bancitaly was organized in June, 1919 by the defendants A. P. Giannini, Hale and Bacigalupi.

Paragraph XXIII alleges that the defendant A. P. Giannini dominated and controlled the directors of Bancitaly corporation until the organization of Transamerica.

Paragraph XXIV alleges that in April of 1927 Bancitaly corporation entered into a certain salary contract with A. P. Giannini to pay him for his services as president thereof five per cent of its net profits, with a guaranteed minimum of \$100,000 per annum. [376]

Paragraph XXV asserts that, pursuant to this salary contract and for the period ending January 1, 1929, the defendants A. P. Giannini and the directors of Bancitaly corporation, that is to say, A. P. Giannini, caused and directed and Bancitaly corporation permitted to be entered on its records certain entries of purported credits in favor of A. P. Giannini amounting to \$925,000, and corresponding entries of liabilities of Bancitaly corporation in that amount, and that such entries were knowingly made upon false, fictitious, inflated and untrue book profits.

Paragraph XXVI alleges that in December of 1928 A. P. Giannini and co-defendant directors and officers of Transamerica knowingly permitted Transamerica to acquire its assets, that is, to acquire the assets of Bancitaly corporation, assume all its liabilities, including the aforementioned salary contract and the aforementioned purported liabilities evidenced upon the corporate records of Bancitaly corporation.

And then in Paragraph XXVII it is alleged that,

commencing January 1, 1927—please note that date—and ending about January 1, 1930 A. P. Giannini and the co-defendant directors and officers of Transamerica knowingly permitted entries to be made on the corporate records of the latter corporation as purported credits in favor of A. P. Giannini aggregating not less than \$5,000,000, and corresponding entries upon the records of Transamerica corporation and liabilities in the same amount; and it is further charged in the same paragraph that said purported credits on the books of Transamerica were false and do not correctly represent five per cent of the net profits, but were in excess thereof, and by said defendants knowingly computed upon false, fictitious, inflated and untrue book profits.

I think it will be recognized that Transamerica could hardly be charged with what was going on prior to the organization of Transamerica, namely, as to what was allegedly taking place with [377] reference to the business and affairs of the Bancitaly corporation. Perhaps there is a clerical misprision somewhere, but it strikes me that under the facts alleged no legal conclusion may properly be drawn charging Transamerica and its officers and directors with any wrong doing because of what may have been done by the officers and directors of Bancitaly corporation.

In Paragraph XXVI—have I referred to that paragraph, Mr. Reporter?

The Reporter: Yes, sir.

The Court: Yes; and I have also referred to Paragraph XXVII. Is that the last paragraph to which I made reference?

The Reporter: Yes, your Honor.

The Court: Then in Paragraph XXVIII we have, briefly, the charge that each item of these alleged credits to A. P. Giannini evidenced sums purportedly payable to him which were by him unearned and for which he gave no consideration.

Now, again, it occurs to me that the making of that contract in April of 1927 and the entries upon the records of Bancitaly corporation up until approximately December, 1928, when its assets were taken over and its liabilities assumed by Transamerica, may not legally be chargeable as a wrong doing on the part of anybody, excepting at most those who allegedly perpetrated this—well, alleged fraud upon Bancitaly corporation.

We come now to Paragraph XXIX and there it is asserted that, commencing January 1, 1927 and ending about January 1, 1939—I repeat the words “commencing January 1, 1927,” A. P. Giannini caused and the co-defendant directors and officers of Transamerica knowingly permitted Transamerica to pay him \$5,000,000 on account of said wrongful credits, to the detriment of Transamerica.

Of course, Transamerica having had no existence until at least December, 1928, could not during any period antedating De- [378] cember of 1928 have paid Mr. A. P. Giannini anything; nor can it, at least, be held as a legal conclusion from the facts set forth in the complaint that the officers or directors of Transamerica caused or permitted to be done any of the acts complained of until, at least, Transamerica

corporation was organized. And so I think it is essential that it be alleged what is involved or what is charged as misconduct prior to the formation of Transamerica in order, at least, that there may be squarely presented on the face of the bill the legal question to which I have been referring, namely, can any legal liability attach to the officers and directors of Transamerica for what Bancitaly did.

In Paragraph XXX it is alleged that A. P. Giannini, L. M. Giannini and Mr. Grant, now deceased, caused, and the co-defendant directors and officers knowingly permitted, the aforementioned transactions to be reflected by the records of Transamerica kept by an involved, intricate and complex system of accounting in conflict with the usual, customary, proper and recognized principles of the science of accounting beyond the knowledge and understanding of plaintiff with respect to such subject, and that such transactions were covered, disguised and concealed beyond discovery by entries and records made under false, misleading and untrue names and designations, not required by and in conflict with the usual, customary, proper and recognized principles of accounting procedure.

Up to that point the complaint deals with the alleged wrongful acts on the part of directors and officers of Bancitaly corporation and alleged wrongful acts on the part of directors and officers of its successor corporation, namely Transamerica.

And next, Paragraph XXXI brings in what, to my mind, is a new subject matter, alien and foreign

to the transactions previously complained of. At this point, perhaps counsel can be of assistance. Will you refer me to that portion of the complaint wherein it is alleged the circumstances disclosing how the al- [379] leged fraud was discovered or otherwise explaining the delay?

Mr. Boardman: I think you will find it at——

Mr. Cramer: XLIV.

Mr. Boardman: ——XLIV, on pages 28, 29 and 30, I think.

The Court: Yes. In Paragraph XLIV it is alleged that plaintiff was at all times ignorant of the matters complained of until about April 27, 1939, when for the first time her attention was called to a certain proceeding then pending before the Securities and Exchange Commission of the United States involving an issue as to whether A. P. Giannini had caused to be filed certain statements containing false and misleading information in support of applications for the registration of shares of Transamerica corporation on various stock exchanges; that in such proceeding certain evidence was brought out tending to establish suspicious circumstances indicating possible irregularities in the conduct of the business and affairs of Transamerica corporation by A. P. Giannini and other defendant directors and officers; that in such proceeding before the Commission these alleged irregularities were developed slowly through detailed examinations and audits of the corporate records and books of account of Transamerica corporation and its many subsidiary corporations and associations; that these were developed by expert

accountants for said Commission; that these proceedings before the Commission are still being contested, are pending and undetermined.

That after being advised of these suspicious circumstances indicating possible irregularity in the conduct of the business and affairs of Transamerica Corporation in the manner previously noted, the plaintiff not knowing the truth or falsity of such information and desiring to determine if actionable wrongs had in fact been committed in the management of the business affairs of Transamerica corporation immediately proceeded to and has at all times ever since diligently investigated and attempted to [380] ascertain the true and actual facts with respect to the transactions and wrongs here alleged, and thus far has been unable to fully complete her investigation and is still proceeding therewith.

When I first read this Paragraph XLIV, some days ago, I made a notation on the margin opposite the concluding paragraph of the paragraph numbered XLIV, of the following: "Do these recitals mean that the plaintiff as yet is unable to assert that the acts complained of actually occurred?"

Mr. Boardman: It means with respect to additional acts, if any.

The Court: I am afraid that there is phraseology here that needs to be revamped because, at any rate, it puts that question in my mind.

I gather from the statement of counsel that in paragraph XLIV we are to find all that the plaintiff has to tell us by way of showing how the matters herein charged came to be discovered by her, and,

in addition, to explain the delay in the bringing of this lawsuit. My present thought is that an action that charges misconduct of the kind herein described, which admittedly is grave and must stamp those guilty thereof as criminals and, to borrow the theme which Shakespeare long ago expressed, would rob these defendants of their good name, which I think most people recognize is more precious than anything else, possibly in the estimation of some as precious as life itself—when a court is confronted with a complaint involving charges of that kind, I think it has a duty to see to it not only that the names of citizens in the community shall not lightly be bantered about, that reputations shall not lightly be tossed into the heap of disgrace, but to require that all reasonable requirements necessary to justify the interposition of the hands of equity shall be made. As it presently appears this complaint, I think, falls short of disclosing sufficient facts to justify what seems to be a rather bald or naked [381] conclusion that plaintiff first discovered the matters complained of about April, 1939, or to explain away that what was ascertained in April, 1939 was not equally known or its equivalent notice was not had prior thereto.

During the argument I asked whether this case was one that would be tried on an agreed statement of facts or upon purely documentary evidence which would lead primarily to questions of law as to the meaning and effect of either the agreed statement or the documentary proof, and counsel very frankly said that it would likely prove a bitter contest around

the testimony of individuals. I think it is a fair inference from that candid reply that a defendant sued in an action of this kind will be subjected to all those risks and dangers that go with the passing of time and the concomitant frailties of human recollection. It does strike me, as I view the matter at present, that before men are subjected to defending a case to be tried under those conditions that the plaintiff should disclose with more particularity what it was, in substance, that came to her knowledge or notice which, in effect, amounted to the discovery for the first time that the acts herein charged were committed. And there, again, I think that it is important to distinguish and segregate between what occurred on the part of Bancitaly, what occurred on the part of Transamerica after its organization in December, 1928, and what occurred with respect to the transactions that are described in the paragraphs beginning with No. XXXI and continuing down to and including Paragraph XXXIV. In other words, as to the alleged wrongful acts arising out of the formation and operating the business of Walston & Co. I am not as yet convinced that they form part of either a single conspiracy or of any joint wrongdoing, that is, joint as the the co-defendants who admittedly had no membership in the firm of Walston & Co or any interest therein. [382]

And we note that, beginning with Paragraph XXXV and continuing down to Paragraph XXX-IX, inclusive, we have set forth what, to me, appear to be, again, transactions, an alleged series of wrongful acts disconnected from the acts complained of

relative to the so-called salary contract and clearly disconnected with those particular defendants alleged to have been involved in some misconduct respecting the operations of Walston & Co.

And then, maybe I have misconstrued this complaint. While counsel for defendants have referred to it as alleging three separate and distinct alleged wrongs, I seem to get the idea that, beginning with Paragraph IX, still another alleged wrongful transaction is alleged. Perhaps a more careful reading of the paragraphs beginning with Paragraph XXXV will convince me that, from that paragraph to the end, we are concerned only with what might be termed a single cause of action. I am not clear in my own mind relative thereto.

I am prompted to ask counsel for plaintiff: Is it your position that the matters complained of relative to the operations of Smith and Mallory, the loans made in connection with their transactions, the profits realized thereby are recoverable therein under the doctrine that you discussed this forenoon in the Fleishhacker case?

Mr. Boardman: Yes.

The Court: Now, finally, as I presently view the complaint, while it might be said that it asserts in effect that, beginning sometime about April, 1927, A. P. Giannini, L. M. Giannini and Mr. Grant, now deceased, decided to enrich themselves at the expense of Bancitaly corporation and that later, following the organization of the successor corporation, Transamerica corporation, they decided to enrich themselves at the expense of the latter corporation;

that such a charge could not support the conclusion that, therefore, the co-defendants have been jointly engaged in what [383] might be called a single enterprise. If we were to so hold, it seems to me it would lead to this result: That any time a group of individuals decided to enrich themselves at the expense of any others with whom they may become associated that thereafter every venture in which they thus engage, regardless how numerous those ventures, regardless over how long a period of time the different ventures are conducted, and everybody who had anything to do with helping those individuals to enrich themselves in any one of these numerous ventures, all would become joint tortfeasors of the same alleged wrong, and one could see how that doctrine could lead to, well, a piling up of countless lawsuits, all under the caption of a single case and with many of the defendants not only having no interest in certain of the ventures, but the decision as to whether or not some of the ventures were lawful or proper might not have any bearing as to whether any of the later ventures were lawful or proper.

For example, in this very complaint, as yet I see no basis upon which any decision relative to the so-called contract, salary contract transaction, will have the slightest bearing in determining the legality or illegality of the so-called Walston & Co. venture, and vice versa. For the purpose of this discussion it is perfectly conceivable that plaintiff could make out a case against those involved in the so-called Walston & Co. operations; but I am unable to see how a de-

cision favorable to plaintiff on that subject matter will have the slightest bearing in determining the legality or illegality of the so-called salary contract, or what the directors of Bancitaly did originally, or what the directors of Transamerica did thereafter, respecting that venture. And then, as to the venture wherein Smith and Mallory were involved, the ramifications pertaining to Bankitaly Mortgage Company, we might even concede for the purpose of this discussion that those involved in the ventures having to do with the Bankitaly Mortgage [384] Company might be compelled to return the sums allegedly wrongfully diverted; and here, again, I do not see how a decision favorable to plaintiff on that subject matter would help us to decide whether any of the defendants should be held liable either on the salary contract deal or the Walston & Co. operations.

I say these are the views that I have in the light of the discussions thus far presented as to the fair meaning of the bill of complaint as it is presently drawn.

I had intended asking one of the counsel on the plaintiff's side—I believe it was Mr. Berrey who advanced the contention that it was necessary, to enable plaintiff to state a cause of action against the administrator of the estate of Grant, to file a claim against this estate, and that there being no allegation to that effect in the complaint no ground for prosecuting this lawsuit against that Estate has yet been shown.

But as to the other counsel, I think that in the light of what I have said, what ought to be done is

to allow plaintiff the opportunity of segregating portions of any further amended bill along the lines that I have outlined, unless counsel desire to file some further brief in the matter. I will consider further that question if you have something to add to what has already been argued.

Mr. Boardman: If the court please, in respect to the question of these items in the complaint that we follow separate items like the salary transaction, the Walston & Co. transaction, and the Mallory trust transaction, with respect to the court's suggestion that perhaps all are independent and, in a sense, that they should not be united in one complaint, while I feel that we have not exactly done justice to that point, I would like to present a memorandum on it if the court would grant us a little time. I am sincere about that. I think that rule— [385]

The Court: I wonder if perhaps this would not be a way of getting at it and perhaps minimizing the time and the labors of all of us: I have allowed—and I am not certain that this would answer the purpose, but I seem to think that it would—namely, that if an amended complaint were to be filed which would consist of several counts, one in which you would embody as much of the present complaint as you think you still desire to retain, and then a series of additional counts in which you might split up these several different transactions, as they presently appear to me to be, at least, that portion of the problem that I have tried to outline will clearly be presented as fully as the plaintiff can. In other words,

you will have done it both the way you now think it ought to be done and the way, at least, I think it is necessary to segregate it; and that will afford an opportunity to the other side to make separate and distinct attacks upon several counts in the bill. And in that same connection I am suggesting that I think we ought to have an opportunity, at least, to rule upon the question as to what liability you claim arose prior to the formation of Transamerica, what liability arose following its formation, and that in turn there, I think some effort should be made to permit those particular defendants who admittedly were directors only up until 1932 to have an opportunity at least, to make their attack because obviously it is conceivable that it might ultimately be held that liability exists as against them only for the limited periods that they were directors.

And—oh, yes. During the argument in response to a question that, while it was clearly not connected with anything disclosed on the face of the complaint, yet I do think it has to do with a case involving charges as serious as we have here, that if it be a fact, I understand the counsel for plaintiff are prepared to make available record proof of the fact that there was [386] a period when these men allegedly selected and dominated by A. P. Giannini and one or two others were removed from the board and a so-called opposition regime elected. I take it that, while it may be argued that possibly matters of that kind can be brought out in the trial, yet it does seem to me that in a case of this type, to the extent that there are facts not open to controversy upon which one

side or the other might rely as a legal basis either for bringing a suit or for defending against it, that it would be to the interest of everybody concerned to bring out those facts on the face of the bill.

Mr. Boardman: As I indicated before, your Honor, we are perfectly willing to investigate that situation and treat it in the complaint in the manner that we think it should be treated so that any question of law can be presented that defendants or any of them might feel desirable. I have no personal reasons, myself, to slide over any transaction in this kind of a case or in any kind of a case. If we plead over, why, probably something ought to be done about it but I don't like to say just what, without first making investigation. But I do think if those facts exist it would be quite proper to let your Honor pass on the legal effect of them on the face of the complaint.

The Court: For example, I have this thought in mind: Suppose the minutes of a particular annual meeting of Transamerica corporation disclose that A. P. Giannini and others, with the holding of various proxies, voted for certain directors and that the directors for whom he voted were, at least as to a majority thereof, defeated and another ticket elected; I say, I am assuming that the records of the corporation's annual meeting might readily disclose that fact and the minutes either of a stock holders' meeting or of a directors' meeting thereafter held might further disclose that there was some discussion had relative to this salary contract. [387]

Mr. Boardman: Of course, I don't know anything about that.

The Court: I appreciate that you don't. I am assuming that those records will be made available in order that whatever the facts may be and if there is any legal basis for either founding a lawsuit or sustaining a defense, that those facts might just as well be set forth in the complaint.

Mr. Boardman: I agree in principle with that, your Honor, but I can't say just how I would treat it, in advance, in a complaint.

The court: Am I correct in assuming that such counsel as represent the defendants having control of the records will make them available?

Mr. Ferrari: Yes, your Honor; in that particular we will be glad to do it.

Mr. Boardman: Now, as I said before, we have no objection to separating our complaint into counts on the various statements of the claims, but it occurs to me that in doing it we should have the advantage of knowing just what the court's decision is on the other questions, that is, if the court is ruling now or if those matters that are to be—I have understood that this was just a discussion.

The Court: Yes. I have outlined my tentative views with the thought that if you feel that you have something that you still ought to add, rather than file an amended complaint along the lines, that you might do so.

Mr. Boardman: No. We would gladly file that kind of a complaint, but in doing it we are still in

the dark on some of these questions that have been presented and have not been decided.

The Court: You are referring now as to the necessity for pleading that an appeal has been made to the stockholders? [388]

Mr. Boardman: That is the principal one; yes.

The Court: Or justifying the failure to do so. I am not convinced that the other side is right. In other words, I am presently impressed with the thought that we are here dealing with an equitable right, even though the matter is somewhat treated in both the former equity rules and in the New Federal Rules of Civil Procedure. Others have observed that the court promulgating these rules was treading on somewhat doubtful territory and that where a stockholder is given the right to redress a wrong, without an appeal the remaining stockholders, that the courts should not and will not modify that substantive right; and that it will be conceded that in the Act of Congress which authorized the Supreme Court to enact the Rules, and later on, the legislature, in allowing the court to revise the entire subject matter of Rules of Procedure, both at law and in equity, distinctly provided that no substantive rights should be invaded. So that I should want to reserve until after the amended complaint is filed my ultimate conclusion in that respect. I take it that the plaintiff is in no position to either allege or prove that an appeal was made to the other side?

Mr. Boardman: There was not.

The Court: So that it is not necessary at this stage of the case, in order to consider any further

amended pleading, to decide that question, because, to use a slang phrase, there isn't anything this plaintiff can do about it.

Mr. Boardman: No; but it might have a little bearing on what we might say in an amended complaint upon that subject, and, of course, I appreciate the remarks the court has already made.

The Court: Do you have in mind possible amplification as to why no appeal was made to the stockholders?

Mr. Boardman: It might be. Of course, we haven't made it. I say, we haven't expressly made it. I think the effect, [389] like we argue, is the same, but we could amplify it.

The Court: I see no reason why you should not do so because I might ultimately find myself changing the views that I presently have on that particular question.

Mr. Boardman: Yes. I understood, if I understand correctly, that you were presently or now inclined to think that it might not be necessary; is that it, may I ask?

The Court: That is correct, but I think that—I was about to observe that I see no prejudice in your stating anything further that you can as to why no appeal was made to the stockholders, even though my present view is that you need not do so. I mentioned that because, for example, if it should be held on further attack on the next amended bill that the respective motions which probably will be made will be sustained, at least, you will have pleaded as much as you can and not be in the position of perhaps

asking leave to further amend the bill, and then the court ruling as to whether or not the proposed amendment would make any difference in ruling, and so on. So I think, from the standpoint of what may ultimately prove effective all around, that in your further amended bill you might as well state the case as strongly as you can as to that proposition.

Mr. Boardman: Well I think I understand the court's views.

The Court: I understand that the reporter will transcribe these discussions.

Mr. Boardman: Of course, if there is to be more argument on this question of appealing to shareholders, I don't know what the defendants might, of course, wish to go into that further. But I wouldn't want to take it out of the—

Mr. Ferrari: We are satisfied with the situation as stated by the court.

Mr. Boardman: What?

Mr. Ferrari: We do not desire to argue any further at this time. [390]

Mr. Boardman: Oh, I see.

The Court: Mr. Berrey, do you still think you are right on that question of filing a claim in a case of this kind?

Mr. Berrey: Yes, if the court please. 318-338

VIII

(All the following are from the hearing of October 12th, 1942.)

Los Angeles, California,
Monday, October 12, 1942:
9:30 A. M.

IX

The Court: Before it is determined that you will need to do that, let me indicate certain views which will help you understand why I am asking plaintiff's counsel to open the discussion.

At the time of the last argument I made certain comments indicating, as you will recall, that the allegations of the first amended complaint, as I viewed them at that time, appeared to me to embrace at least three, if not four, separate and distinct causes of action; and I indicated what I considered the nature of those separate and distinct controversies and pointed out that according to the allegations of the bill, the pleading was insufficient to show legal justification for joining the same, but that, in any event, the points which were raised in opposition could more clearly be considered and determined if in further amending the bill these controversies which were described in the first amended bill were pleaded separately, without, however, prejudice to the right of plaintiff to add an additional count if you still were convinced that all of these separate controversies should, nevertheless, be combined in a single cause of action. 5-6

X

Now I observe that in the second amended complaint we still have a single count and the charge of conspiracy beginning with, I believe, sometime

in the year 1928; and then there have been set forth in various subdivisions various purported objects of this conspiracy; and then these are followed by other allegations [391] setting forth that the various acts were committed.

If my reading of this second amended complaint is accurate it would appear that, as distinguished from the first amended complaint, no reference is now made to any alleged wrong-doing occurring prior to the formation of Transamerica Corporation. I think it would help me in following this discussion if you pointed out why you have not made the segregation in this second amended complaint under separate causes of action as I interpreted what took place between court and counsel with respect to which I have just quoted from the transcript, that in the second amended complaint we were to have, in any event, separate and distinct counts even though you concluded to add as one count all of the acts complained of. I am particularly struck by this seeming departure from what I gathered was acceptance by counsel for plaintiff in connection with the drafting of the second amended complaint. 14, 15

IX

Mr. Boardman: May it please your Honor, of course, the court this morning in reading from the former proceeding covered, in general, several subjects. It is a little hard to assemble them and inasmuch as——

The Court: Would you like to borrow this transcript?

Mr. Boardman: Oh, no. I have a copy, your Honor. But inasmuch as it seems to me from the practice I have had in many years that we probably are tending to engage in a controversy over the merits of this case, as to why a pleading should be thus and so depends upon what knowledge the pleader has of the facts, and that might change from time to time. When we were here before we had a pleading that the court did not rule upon, as I understood it, but we discussed it and that is about all there was to it. That was one pleading. Since that time certain things have occurred that caused a change in the pleading, not in the fundamental facts of how the money or property of the Trans-america Corporation was used by these defendants, but the way [392] they did it and the legal theory upon which it was done. 16

XII

Mr. Boardman * * *

19

XIII

*** I want to say to the court and to opposing counsel that the facts that are alleged in the present complaint and the theory of the case is based, or are based upon the proceedings, the official proceedings before the Securities and Exchange Commission, and if it is necessary we will ask the court to take judicial notice of that record. * * *

21

XIV

Mr. Boardman * * *

32

XV

Now, if your Honor thinks that a suit against fiduciaries under the circumstances of this complaint, or anyone who does them, is more than one cause of action or more than one claim, I again say we will separate it. But I do not believe that is the law, that is the only difference. I recognize your Honor's authority and the reason for it—to make a clear presentation of the issues. Every defendant in this case has to answer every paragraph, anyway. They can't escape from it. Now, why separate it? There isn't any point in it that I can see. I don't mean to be arbitrary about it at all. If your Honor wants another kind of a pleading, I am willing to do it, but I did not think in view of the kind of a pleading it is, that your Honor would even think that that was necessary.

33, 34

XVI

Afternoon Session 1:00 O'clock. 47

XVII

The Court: I think it is unfortunate that in the drafting of this second amended complaint you did not make the segregation, because I think it would be a whole lot clearer. It would make [393] our discussion and our consideration of the questions clearer if you had made the segregation as you indicated that you would.

Mr. Boardman: Perhaps from your Honor's standpoint that might be true, but nevertheless, I am rather from the old school and I have always

thought that we had one cause of action, especially one for an accounting, that it could not be separated properly. Now, maybe if I am wrong about that, why, that is a simple matter.

The Court: Did you get the understanding from the discussion at the prior argument that there would be nothing to prevent you, for example, in your second amended complaint doing both, namely, including one count based upon the theory that there was no legal need for segregation, and then, however, additional counts in which the particular subjects that were pointed out as apparently relating to separate and distinct causes of action would be pleaded in separate counts? Did you get the impression that you could in this second amended complaint do that?

Mr. Boardman: No; I did not. I did not get that impression and the propriety of it did not occur to me; and the only reason for not separating them was that it was just simply a suit for an accounting and I thought that it was a very simple matter. I see now what the court has in mind, that it could be pleaded all in one count and possible segregated in other counts. Of course, that is something that did not occur to me. 54-55

XVIII 96-98

Mr. Cosgrove: If your Honor please, would you tolerate a suggestion from me?

The Court: Surely.

Mr. Cosgrove: Mr. Boardman has said that he has investigated, and asserts here that his client did

not receive a copy of the letter of December 9, 1931, and, of course, in view of that statement it would not be proper to ask him to allege that she did. There is such a letter. It is pleaded in the Abrams case that [394] it was sent out to all of the stockholders. Now, the records disclose that. If Mr. Boardman would plead the fact as disclosed by the records, that that letter was sent out, and plead that letter and deny that his client received it, he would enable this court to pass, as a matter of law, on the question raised by the statute of limitations as to whether or not those directors that were there and sent out this letter, signed by Bacigalupi, the president, and signed by Walker, the President of the board,—whether or not they were dealing at arm's length with Mr. Giannini and whether Mr. Giannini was at that time actually out and whether or not they were contesting with him the control of the board.

The Court: Do I understand you to say that the corporate records of Transamerica disclose that such a letter was sent to the stockholders or directed to be sent to all the stockholders?

Mr. Cosgrove: Yes; and we have an affidavit here supporting our motion that covers that matter.

Mr. Boardman: Not a corporate record.

Mr. Cosgrove: Sir?

Mr. Boardman: It was not a corporate record nor a corporate act.

Mr. Cosgrove: Well, we think it was a corporate act and we think the record discloses it was a corporate act.

Mr. Boardman: Well, I was advised otherwise.

Mr. Ferrari: It was an act of the then board of directors.

Mr. Cosgrove: Yes; it was sent out by them. The letter of the board of directors will disclose that itself.

The Court: Is there anything that discloses from the minutes or any other records of the corporation that such a letter properly was sent to all the stockholders?

Mr. Ferrari: An officer of the corporation who handled it has made affidavit to that effect, Mr. Campana, that it was sent to all the stockholders.

96-98 [395]

The above and foregoing portions of the reporter's transcript is tendered for filing herein, pursuant to Rule 75, Sub-division B of the Federal Rules of Civil Procedure and includes two copies of the same.

Dated: this 24th day of November, 1943.

VINCENT A. MARCO
HOMER N. BOARDMAN
PERCY V. CLIBBORN

Attorneys for Plaintiff and
Appellee.

[Endorsed]: Filed Nov. 24, 1943. [396]

DOCKET ENTRIES

1941

- Apr. 16—Fld compl by stockholders for an actg by directors Issd summ. Made Ja 5.
- Jun. 23—Ent ord placing on cal for 6/30/41 10 a.m. under Rule 16 FRCP Counsel notified.
- ” 30—Ent ord strik. from cal hrg Rule 16 FRCP
- Sep. 15—Ent ord plac. on cal 9/22/41 10 a.m. Rule 16. Not. counsel
- “ 22—Ent ord contin hrg per Rule 16(6) FRCP to 10/20/41 10 a. m.
- “ 23—Fld summons ret'd not exec
- Oct. 20—Ent ord cont to 11/17/41 10 a. m. hrg. per Rule 16 [6] FRCP.
- Nov. 17—Ent ord cont 12/15/41 10 a. m. hrg. purs. Rule 16 [6] FRCP.
- Dec. 15—Ent ord. contg. 12-29-41, 10 a. m. for fur. hrg. Rule 16 [6] FRCP.
- “ 29—Ent ord. strik. from cal hrg Rule 16 (6) as amended compl. fld. today.
- “ 29—Fld. First amended compl.

1942

- Jan. 2—Fld. prae plf. & iss'd summons on amended compl.
- Mar. 12—Ent ord transf cause to div of Judge Hollzer for all fur proceedgs. Notified counsel. Placed on cal of 4/6/42 for diep purs to Rule 16(6).

1942

- Mar. 27—Fld stip & ord exten time of deft Amadeo P. Giannini to 4/30/42 to move or plead.
- “ 30—Fld sep stips & ord thereon extend time of defts (1) A. H. Giannini et al (2) Transamerica corp (3) Bank of Amer Natl Trust & Savgs Assn (4) L. M. Giannini et al and (5) Charles De Y Elkers et al to 4/30/42 incl to plead.
- Apr. 3—Fld summons & ret of Mar thereon
- “ 6—Ent ord off cal for diep purs to Rule 16(6) as case soon to be at issue.
- “ 29—Fld 5 sep stieps & ords thereon ext time defts BK of Amer Natl Trust & Savgs Assn A. H. Giannini et al, L. M. Giannini et al, Charles De Y Elkus et al & Trans-Amer Corp to 5-4-42 to ans 1st amend compl or plead thereto.
- “ 30—Fld mo & no of mo of deft Amadeo P. Giannini, etc. to dismiss, for ord requir plf to state causes of action separately, for more defin stmt or B/P & to strike ret 5-21-42, & ord thereon approvg. Fld pts & auths in suppt of said mos.
- “ 30—Fld deft Herbert E. White's mos. to dismiss to strike, & for more defin stmt or B/P & notice ret 5-21-42. Fld pts & auths.

1942

May 4—Fld no & mos by defts Walston & Co., a copartnership, et al to dismiss for better stmt, to strike etc. ret 5-21-42. Fld pts & auths.

Fld no & mos by deft L. M. Giannini, et al, to dismiss etc ret 5-21-42. Fld pts & auths.

Fld answer of deft Trans-America Corp. Fld mos by deft A. H. Giannini, Wm. E. Blauer, et al (1) to dismiss the action (2) for order requiring plf to state separately causes of action (3) for a more defn stmt & B/P (4) to strike parts of compl. Fld pts & auths in support of mos. & no of mo for 5-21-42.

Fld mos of deft Bank of Amer NT&S Assn as Admin with will annexed of est of John M. Grant to (1) dismiss the action (2) for a more defn stmt or B/P a no of mo for 5-21-42.

Fld pts & auths in support of mo.

“ 19—Entire order pursuant to stip vacating hrg date of 5-21-42 on various mos. to dismiss etc & resettle hrg on said mos. for 6-16-42 & that plf file answers auths by 6-2-42 & movants file closing auths by 6-11-42. Not waived.

1942

- Jun. 2—Fld plfs brief re defts not to dismiss etc.
- “ 4—Ent Min Ord Cont to 6-23-42 hrg various Motions to dismiss, etc.
- “ 5—Ent Ord that defts have to 6-15-42 to file closing briefs on various mots.
- “ 15—Fld reply brief of defts L. M. Giannini et al in dupl. Fld reply deft H. E. White to plfs brief on mo to dis etc in dupl. Fld in dupl answerg pts & auths of Bk of America, etc. —241—242—284.
- [398]
- Jun. 15—Fld in dupl pts & auths of deft A. P. Giannini on mo to dis, etc.
Fld in dupl reply brief defts A. H. Giannini et al on Mos to dis.
Fld in dupl pts & auths defts Walston & co et al in reply to plfs pts & auths on mos to dis, etc.
- “ 23—Ent proc on hrg various motions to dismiss, etc & ent ord contg to 6-24-42 for fur hrg.
- “ 24—Ent proc on fur hrg on motions to dismiss, etc & ent ord contg to 6-25-42 for fur hrg.
- “ 25—Ent proc on fur hrg on motions to dismiss of various defts & ent ord that plf serve & file Amend compl within 60 days & that defts have 30 days thereafter to plead thereto.
- Aug. 17—Ent ord extend time to 8/21/42 incl to file amend compl.

1942

Aug. 21—Fld second amend compl. Fld pts & auths.

Sept. 2—Fld ord extdg time to plead to 9-15-42.

“ 15—Fld motions by defts to dismiss; for an ord requiring plf sep to state causes of action; for a more defin stmt or B/P; to strike; fld pts & auths thereon. Fld ans. deflt Transamerica corp. Fld mo deflt Bk of America, etc to dismiss for separate stmt of causes of action & more def stmt or B/P & notice ret 10-1-42. Fld pts & auths in suppl in dupl. Fld mos defts A. H. Giannini et al to dismiss; for separate stmt etc., for more defin stmt & B/P & to strike & notice ret 10-1-42. Fld pts & auths in supp in dupl. Fld mo defts Chas. de y. Elkus et al to dismiss; for separate stmt of Causes of Action & more def stmt or B/P & notice ret 10-1-42. Fld pts & auths in supp (dupl to come from S. F.) Fld mo defts A. P. Giannini etc to dismiss; for separate stmt etc., for more def stmt or B/P & to strike & notice ret 10-1-42. Fld pts & auths in supp in dupl. Fld mo H. E. White to dismiss; for separate stmt; for more defin stmt or B/P & to strike & notice ret 10-1-42. Fld pts & auths in supp in dupl.

1942

- Sept. 24—Ent ex parts proc's & ent ord cont all mot's on cal of 10-1-42 to 10-12-42 & that plf have to 10/8/42 to file brief. Not waived.
- Oct. 9—Fld plf's reply pts & auths with respect to second amended compl.
- “ 12—Ent proc on hrg various motions to dismiss, etc & ent ord that defts file memo by 10-15-42 & plf file ans memo by 10-23-42 & placed on cal of 10-26-42 at 10 a. m. for submission. . [399]
- 242—
- Oct. 15—Fld deft supp memo.
- ” 16—Ent Min Ord that plf file synopsis re Cert matters with pts & auths same to be fld with memo on 10/26/42 & that defts have to 11-2-42 to file ans memo & cont. to 11-9-42 at 10 A M for subm on various Mats to Dism.
- ” 23—Fld stip & ord thereon plfs pts & auth required by ord 10-16-42 be fld to & inc 11-2-42, defts to file answerg memo to & inc 11-9-42 and cause cont'd to 11-16-42 at 10 A M for submission.
- Nov. 2—Fld plfs arg & brief in reply to defts Auths on Mo's.
- ” 9—Fld pts & auths defts Elkus et al re Mats concerng 2nd Amend Compl. Fld pts & Auths L. M. Giannini, et al to plfs Arg & brief. Fld Ans of A. H. Giannini et al to plfs Arg & Brief in Reply

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to Defts points & Auth, etc. Fld Ansg Memo to deft A. P. Giannini in sup of his Mats directed at Second Amended Compl.

Nov. 16—Ent Ord Stand submitted on Mats of various defts to dismiss, etc.

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Feb. 1—Ent Ord Cont Term for Settng. N/A.

Apl. 16—Fld Memo of Conclus. Ent Min Ord grantg all Mats to dismiss the Sec. Amended Compl & allow Plf to 6/1/43 to make application for leave to file 3rd amended Compl., et. Notif Counsel

” 20—Fld not of Ord grtg mots to dismiss.

” 21—Fld 1 vol reprtrs trans hrg on mots 10/12/42

Fld 1 vol reprtrs trans hrg on mots 6/23, 24, 25/42.

Fld letter from Cosgrove & O’Neil with photostat copy minutes Bd Dir Trans-america Corp 12/9/31.

May 31—Fld Ord for hrg & design. officer to take testi. in File No. 1-2964 before Sec. & Exch Commr.

June 2—Fld petn B. F. McClung for leave to intervene.

” 9—Ent Ord flg & ent Jdgmn. Fld & ent Jdgmn of Dismsl with Costs to mov’g defts. (OB 17/467. D & I Judgmt. Notif counsel by mail. Made report JS 6

” 10—Fld not. of entry jdgmt.

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June 11—Fld cost bill deft Amadeo P. Giannini.

” 14—Taxed costs favor deft Giannini at \$30.00; Dock & ent. same. [400]

Sept. 7—Fld Plf's Notice of Appeal and Mailed Copies to Edmund Nelson, Atty for deft Transamerica Corp; Keyes & Erskine, Attys for A. H. Giannini et al; Russ Avery atty for L. M. Giannini et al; Tanner, Odell & Taft, Attys for Herbert E. White; Cosgrove & O'Neil, Attys for A. P. Giannini; Bacigalupi, Elkus & Salinger, Attys for Walston & Co. et al; Geo. D. Schilling & G. L. Berrey Attys for Bank of America; and Chas. B. & Jos. D. Taylor, Attys for interv. Bertha F. McClung.

Sept. 13—Fld smts pts on which appellant intends to rely.

Fld appellants desig contents rec on app

Sept. 20—Fld desig deft A. P. Giannini et al of addtl portions rec on app.

” 22—Fld supplemental desig of A. P. Giannini of addtl portions rec on app

Sept. 23—Fld appellees desig of addl parts rec on appl

Oct. 12—Fld ord extend'g time for flg & docketing trans of rec on app for period 45 days from & aft 10-17-43

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON THE APPEAL

To the Defendants Named in the Above Entitled Actions As the Appellees Upon Appeal and Their Respective Attorneys of Record:

The plaintiff in the above entitled action and appellant upon appeal hereby makes the following statement of the points on which she intends to rely on the appeal, towit:

I.

The court's conclusion contained in its memorandum at pages 15 and 16 that:

“While the plaintiff charges that all of the defendants and said forty-four other persons committed fraudulent and illegal acts—recitals which are but legal conclusions—her [404] pleading fails to set forth with particularity the ultimate facts and circumstances constituting the alleged fraud and illegality.”

is erroneous.

II.

The court's conclusion, contained in its memorandum at page 28, that

“if the bar of the Statute of Limitations or of laches is to be avoided it will be necessary for plaintiff to plead other facts besides those set forth in her second amended complaint.”

is erroneous.

III.

The court's conclusion in referring to the plaintiff's second amended complaint contained in its memorandum at page 30 that

"It is replete with surplusage and repetitions as well as legal conclusions, including numerous recitals, more or less general, vague and indefinite * * *."

is erroneous.

IV.

The court's conclusion contained in its memorandum at page 35 that

"before it can be held that plaintiff has a cause or causes of action against defendants or any of them, and likewise before it can be determined that any such cause or causes of action may be filed at this late date, it will be necessary for plaintiff to allege other matters besides those pleaded in her second amended complaint."

is erroneous. [405]

V.

The court's conclusion, contained in its memorandum page 37, that

"each and all of the respective motions to dismiss should be granted."

is erroneous.

VI.

The court's order, contained in the minute order of April 16, 1943, that

“each and all of the motions filed on behalf of the respective defendants to dismiss the second amended complaint be granted.”

is erroneous.

VII.

The court erred in making and giving the final judgment and decree dismissing plaintiff's cause of action which was filed and entered June 9th, 1943.

The above and foregoing points, Nos. 1-7 inclusive and the errors of the trial court mentioned and set forth in each of said points will be argued by appellant and submitted to the Circuit Court of Appeal for its consideration and decision.

VINCENT ANTHONY MARCO
HOMER N. BOARDMAN
PERCY V. CLIBBORN

Attorneys for Plaintiff and
Appellant.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed Sept. 17, 1943. [406]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To the Defendants Named In the Above Entitled
Action As the Appellees Upon Appeal and
Their Respective Attorneys of Record:

The plaintiff in the above entitled action and the appellant upon the appeal hereby designates the following pleadings, motions, orders, judgments,

conclusions and other documents to be and constitute the record on appeal from the final judgment entered in the above action, to wit:

1. Minute order of June 25, 1942 on motions to dismiss first amended complaint and granting plaintiff sixty days in which to serve and file a second amended complaint.

2. Minute order of August 17, 1942 extending and enlarging the time for filing a second amended complaint to August 21, 1942, inclusive. [409]

3. The plaintiff's second amended complaint filed August 21, 1942.

4. File No. 1-2964, dated November 22, 1938, entitled "Order for Hearing and Designating Officer to take Testimony", made and given by the Federal Securities & Exchange Commission.

5. Motion to dismiss directed against the plaintiff's second amended complaint filed September 15, 1942 by Cosgrove & O'Neill on behalf of defendant Amadeo P. Giannini, individually and in certain representative capacities.

6. Motion to dismiss of defendant Herbert E. White, directed against plaintiff's second amended complaint and filed September 15, 1942 by his attorneys, Tanner, O'Dell & Taft.

7. Motion to dismiss directed against plaintiff's second amended complaint filed September 15, 1942 by Keys & Erskine, Herbert W. Erskine and Louis Ferrari for and on behalf of a certain group of defendants.

8. Motion to dismiss of defendant Bank of America National Trust & Savings Association di-

rected against plaintiff's second amended complaint and filed September 15, 1942 by it's attorneys George D. Schelling and G. L. Berrey.

9. Motion to dismiss directed against plaintiff's second amended complaint and filed September 15, 1942 by Bacigalupi, Elkus & Salinger and Claude N. Rosenberg, attorneys for and on behalf of a certain group of defendants.

10. Motion to dismiss directed against plaintiff's second amended complaint filed September 15, 1942 by Russ Avery as attorney for a certain group of defendants.

11. The answer of the defendant Transamerica corporation, a corporation, to the plaintiff's second amended complaint filed by its attorney of record, Edmund Nelson.

12. A minute order of April 16, 1943, granting all motions to dismiss and also granting plaintiff leave by June 1, [410] 1943 to make application for permission to file a third amended complaint.

13. The memorandum of the court's conclusions filed April 16, 1943.

14. The final judgment of dismissal filed June 9, 1943 and entered June 9, 1943 in Civil Order Book No. 17, Page 467 Records of the above entitled court.

15. Plaintiff's and appellant's notice of appeal to the Circuit Court of Appeals under Rule 73 (b).

16. Plaintiff's and appellant's designation of contents of record on appeal.

17. Plaintiff's and appellant's statement of the points on which she intends to rely on the appeal.

Plaintiff and appellant hereby requests that the above and foregoing portions of the record and proceedings in the above entitled case be constituted the record on appeal from the final judgment entered in the above entitled case and made into and prepared as a transcript for such purposes and in the manner provided by law.

VINCENT ANTHONY MARCO
HOMER N. BOARDMAN
PERCY V. CLIBBORN

Attorneys for plaintiff and appellant Rose Papan-
tonio, suing in her own behalf as a shareholder
of Transamerica corporation and in behalf of
all other shareholders of said corporation
similarly situated.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed Sept. 13, 1943. [411]

[Title of District Court and Cause.]

DESIGNATION OF DEFENDANT AMADEO P.
GIANNINI OF ADDITIONAL PORTIONS
OF THE RECORD ON APPEAL

To the Clerk of the Above Entitled Court, And To
Plaintiff And Her Attorneys of Record:

Defendant and appellee, Amadeo P. Giannini, in-
dividually and in each of the capacities in which
he is sued, hereby designates the following addi-
tional portions of the record and proceedings to be
included in the record on plaintiff's appeal from the

final judgment entered in the above entitled action, to wit: [414]

(a) Transcript of Clerk's civil docket entries in this action.

(b) Plaintiff's first amended complaint, filed December 29, 1941.

(c) Motions by Defendant Amadeo P. Giannini, Individually and as Executor of the Last Will and Testament of Virgil D. Giannini, Deceased: (1) To Dismiss the Action; (2) For an Order Requiring Plaintiff to Separately State Causes of Action in Separate Counts; (3) For a More Definite Statement or Bill of Particulars, and (4) to Strike, filed April 30, 1942.

(d) Motions by Defendant Herbert E. White (1) to Dismiss the Action; (2) For an Order Requiring Plaintiff to Separately State Causes of Action in Separate Counts; (3) For a More Definite Statement or Bill of Particulars, and (4) To Strike, filed April 30, 1942.

(e) Motions by Defendants A. H. Giannini, et al. (1) To Dismiss the Action; (2) For an Order Requiring Plaintiff to State Separately Causes of Action in Separate Counts; (3) For a More Definite Statement or Bill of Particulars; and (4) To Strike Out Portions of the Complaint, filed herein May 4, 1942.

(f) Motion of Defendant Bank of America National Trust & Savings Association, as Administrator-With-the-Will-Annexed, of the Estate of John M. Grant, Deceased, (1) To Dismiss the Action;

(2) For a More Definite Statement or Bill of Particulars, filed May 4, 1942.

(g) Notice of motions by defendants Walston & Co., a co-partnership, et al., filed herein May 4, 1942.

(h) Motions by Defendants L. M. Giannini, Individually and as an Alleged Partner of Walston & Co., et al., (1) to Dismiss the Action; (2) For an Order Requiring Plaintiff Separately to State Causes of Action in Separate Counts; (3) For a More Definite Statement or Bill of Particulars; and (4) To Strike, filed herein [415] May 4, 1942.

(i) The following excerpts from the Reporter's Transcript of June 23, 24 and 25, 1942, on the hearing of the motions described herein in paragraphs (c) to (h), inclusive, as follows, to wit:

(Insert asterisks following each excerpt to indicate matter is omitted.)

1. Page 5, line 1, the language: "Los Angeles, California, Tuesday, June 23, 1942; 10:00 A. M."

2. Page 47, lines 1 and 2, the language: "Afternoon Session 2:00 o'Clock".

3. Page 56, line 23, the words: "Mr. Cramer:"

4. Page 66, line 11, beginning with the words, "If the court please", through and including page 67, line 24, concluding with the words, "setting forth certain features."

5. Page 124, line 10, the words, "Mr. Ferrari:"

6. Page 129, line 21, beginning with the words, "We have also made", to and including page 132, line 24, concluding with the words "Gianninis at that time."

7. Page 238, line 1, the words: "Los Angeles, California, Thursday, June 25, 1942; 10:00 A. M."

8. Page 304, lines 1 and 2, the words: "Afternoon Session 2:00 o'Clock".

9. Page 318, line 1, beginning with the words, "The Court: The comments I am about to make", through and including page 338, line 16, concluding with the words, "Yes, if the court please". [416]

(j) Add to and include in each of the motions described in paragraphs 5 to 10, inclusive, of plaintiff's Designation of Contents of Record on Appeal the respective notices of motion attached to each motion.

(k) Add to the motion to dismiss described in paragraph 7 of plaintiff's Designation of Contents of Record on Appeal and immediately following the notice of said motion the Affidavit of Edmund Nelson and the Affidavit of Hector Campana, including Exhibit A thereto filed under the same cover.

(1) The following excerpts from the Reporter's Transcript of the hearing held October 12, 1942, on the motions of defendants directed at the second amended complaint, as follows, to wit:

(Insert asterisks following each excerpt to indicate matter is omitted.)

1. Page 4, line 1, the language: "Los Angeles, California, Monday, October 12, 1942; 9:30 A. M."

2. Page 5, line 17, beginning with the words, "The Court: Before it is determined", to and including page 6, line 11, concluding with the words "combined in a single cause of action".

3. Page 14, line 17, beginning with the words, "Now I observe", to and including page 15, line 13, concluding with the words "drafting of the second amended complaint".

4. Page 16, line 1, beginning with the words, "Mr. Boardman: May it please your Honor", to and including page 16, line 20, concluding with the words, "upon which it was done".

5. Page 32, line 20, the words, "Mr. Boardman:"

6. Page 33, line 19, beginning with the words, "Now, if your Honor thinks", to and including page 34, line 6, concluding with the words, "even think that [417] that was necessary".

7. Page 47, lines 1 and 2, the words, "Afternoon Session 1:00 o'Clock".

8. Page 54, line 3, beginning with the words, "The Court: I think it is unfortunate", to and including page 55, line 6, concluding with the words, "occur to me".

9. Page 96, line 19, beginning with the words, "Mr. Cosgrove: If your Honor please". continuing to and including page 98, line 9, concluding with the words "was sent to all the stockholders."

(m) Letter dated October 7, 1942, addressed to the Honorable Harry A. Hollzer, signed Cosgrove & O'Neil, By T. B. Cosgrove, including copy of minutes of the meeting of the Board of Directors of Transamerica Corporation held December 9, 1931, referred to and filed with said letter.

(n) Notice of order granting motions to dismiss, including affidavit of service thereof, filed

herein April 20, 1943, by Cosgrove & O'Neil, et al., attorneys for defendant Amadeo P. Giannini, individually and in all of the capacities in which he is sued.

(o) This Designation of Additional Portions of the Record on Appeal, including joinder of other defendants therein, together with affidavit of service thereof.

Defendant Amadeo P. Giannini, individually and in all capacities in which he is sued herein, hereby requests that the above and foregoing additional portions of the record and proceedings in the above entitled court be included in the record on appeal in the manner provided by Rule 75 of the [418] Federal Rules of Civil Procedure.

Dated: September 20, 1943.

COSGROVE & O'NEIL

T. B. COSGROVE

F. J. O'NEIL

JOHN N. CRAMER

By JOHN N. CRAMER

Attorneys for Defendant Amadeo P. Giannini, Individually and in All of the Capacities in Which He is Sued [419]

The defendants represented by the undersigned counsel hereby join in and adopt the within and foregoing Designation of Defendant Amadeo P.

Giannini of Additional Portions of the Record on Appeal.

TANNER, ODELL & TAFT

By DONALD A. ODELL

Attorneys for Defendant Herbert E. White

GEORGE D. SCHILLING and

G. L. BERREY

By G. L. BERREY

Attorneys for Defendant Bank of America National
Trust & Savings Association as Administrator-
With-the-Will-Annexed of the Estate of John
M. Grant, Deceased

BACIGALUPI, ELKUS &

SALINGER

CLAUDE N. ROSENBERG,

ESQ.

By CLAUDE N. ROSENBERG

Attorneys for Defendants Walston & So., a copart-
nership, and Charles deY. Elkus, William S.
Hoelscher, Clifford P. Hoffman, C. J. Smith,
Vernon C. Walston and Claire Giannini Hoff-
man, transacting business as copartners under
the firm name and style of Walston & Co.

RUSS AVERY and GORDON

GRAY

By RUSS AVERY

Attorneys for Defendants L. M. Giannini, indi-
vidually, and as an alleged partner of Walston
& C., O. D. Hamlin, T. W. Harris, A. P. Ja-
cobs, F. G. Stevenot, P. A. Bricca, George J.
DeMartini, W. N. Lagomarsino, Chester H.

Loveland, Theodore M. Stuart, A. J. Scampini,
Gordon Gray and Russ Avery.

KEYES & ERSKINE

HERBERT W. ERSKINE

LOUIS FERRARI

By HERBERT W. ERSKINE

Attorneys for Defendants A. H. Giannini, William
E. Blauer, Leon Bocqueraz, E. H. Clark,
Charles N. Hawkins, W. F. Morrish, A. J.
Mount, Alfred E. Sbarboro, James A. Baci-
galupi, George A. Webster, C. R. Bell, W. W.
Garthwaite and Louis Ferrari, jointly and
severally.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed Sept. 20, 1943.

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[Title of District Court and Cause]

SUPPLEMENTAL DESIGNATION OF
AMADEO P. GIANNINI OF ADDITIONAL
PORTIONS OF THE RECORD ON AP-
PEAL

To the Clerk of the Above Entitled Court, and to
Plaintiff and Her Attorneys of Record:

Defendant and appellee, Amadeo P. Giannini,
individually and in each of the capacities in which
he is sued, hereby supplements the "Designation of
Defendant Amadeo P. Giannini of Additional Por-
tions of the Record on Appeal" filed herein Septem-
ber 20, 1943, by designating further additional por-

tions of the record and proceedings to be included in the record on plaintiff's appeal from the final judgment entered in the above entitled action, to wit: [422]

(p) The complaint herein filed on or about April 16, 1941.

(q) The following additional excerpts from the Reporters' Transcript of the hearing held October 12, 1942, on the motions of defendants directed at the second amended complaint, as follows, to wit:

(Insert asterisks following each excerpt to indicate matter is omitted)

1. Page 19, line 14, the words, "Mr. Boardman:"
2. Page 21, line 4, beginning, "* * * I want to say to the court", to and including page 21, line 10, concluding with the words, "that record."

(r) This Supplemental Designation of additional portions of the record on appeal, including the joinder of certain other defendants therein, together with affidavit of service thereof.

Defendant Amadeo P. Giannini, individually and in all capacities in which he is sued herein, hereby requests that the above and foregoing further additional portions of the record and proceedings in the above entitled court be included in the record on appeal in the manner provided by Rule 75 of the Federal Rules of Civil Procedure, in addition to the matters indicated in the Designation of Defendant Amadeo P. Giannini of Additional Portions of the Record on Appeal filed herein September 20, 1943.

Dated: September 22, 1943.

COSGROVE & O'NEIL,

T. B. COSGROVE,

F. J. O'NEIL,

JOHN N. CRAMER,

By JOHN N. CRAMER,

Attorneys for Defendant Amadeo P. Giannini, Individually and in All of the Capacities in Which He is Sued. [423]

The defendants represented by the undersigned counsel hereby join in and adopt the within and foregoing Supplemental Designation of Amadeo P. Giannini of Additional Portions of the Record on Appeal.

TANNER, ODELL & TAFT,

By DONALD A. ODELL,

Attorneys for Defendant Herbert E. White.

GEORGE D. SCHILLING and

G. L. BERREY,

By G. L. BERREY,

Attorneys for Defendant Bank of America National Trust & Savings Association as Administrator-With-the-Will-Annexed of the Estate of John M. Grant, Deceased.

RUSS AVERY and
GORDON GRAY,

By RUSS AVERY,

Attorneys for Defendants L. M. Giannini, individually, and as an alleged partner of Walston & Co., O. D. Hamlin, T. W. Harris, A. P. Jacobs, F. G. Stevenot, P. A. Bricca, George J. DeMartini, W. N. Lagomarsino, Chester H. Loveland, Theodore M. Stuart, A. J. Scampini, Gordon Gray and Russ Avery.

(Affidavit of Services by Mail Attached.)

[Endorsed]: Filed Sept. 22, 1943. [424]

[Title of District Court and Cause.]

DESIGNATION OF ADDITIONAL PORTIONS
OF RECORD ON APPEAL

To the Clerk of the Above Entitled Court, and to
Plaintiff and Her Attorneys of Record:

Defendants and Appellees, Charles de Y. Elkus, and Charles de Y. Elkus, William S. Hoelscher, Clifford P. Hoffman, C. J. Smith, Vernon C. Walston and Clair Giannini Hoffman, transacting business as co-partners under the firm name and style of Walston & Co., and Walston & Co., a co-partnership, jointly and severally, hereby designate the following additional matters to be included in the record on Plaintiff's appeal from the final judgment entered in the above entitled action, to-wit:

1. Plaintiff's complaint filed herein at the time the [426] above entitled cause was instituted so that the record on appeal will include said original complaint, Plaintiff's first amended complaint and plaintiff's second amended complaint, the latter two of which pleadings have heretofore been designated to be contained in said record on appeal.

2. The following statement made by Plaintiff's counsel upon oral argument of motions heard on October 12th, 1942, which statement appears at Page 21, lines 4 to 10 of the Reporter's Transcript thereof, to-wit:

“* * * I want to say to the court and to opposing counsel that the facts that are alleged in the present complaint and the theory of the case is based, or are based, upon the proceedings, the official proceedings before the Securities and Exchange Commission, and if it is necessary we will ask the court to take judicial notice of that record.”

3. This designation of additional portions of the record on appeal including affidavit of service thereof.

The Defendants and Appellees hereinabove named, and on whose behalf this designation is made, do hereby request that the above and foregoing additional portions of the record and proceedings in the above entitled court be included in the record on appeal in the manner provided by Rule 75 of the Federal Rules of Civil Procedure.

Dated: September 22, 1943.

BACIGALUPI, ELKUS & SAL-
INGER,

CLAUDE N. ROSENBERG,

By CLAUDE N. ROSENBERG,

Attorneys for defendants, Charles de Y. Elkus, and
Charles de Y. Elkus, William S. Hoelscher,
Clifford P. Hoffman, C. J. Smith, Vernon C.
Walston and Clair Giannini Hoffman, transact-
ing business as co-partners under the firm name
and style of Walston & Co., and Walston & Co.,
a co-partnership, jointly and severally. [427]

The Defendants and Appellees represented by the
undersigned counsel hereby join in and adopt the
within and foregoing "Designation of Additional
Portions of Record on Appeal".

KEYES & ERSKINE,

HERBERT W. ERSKINE,

LOUIS FERRARI,

By LOUIS FERRARI,

Attorneys for Defendants A. H. Giannini, William
E. Blauer, Leon Bocqueraz, E. H. Clark,
Charles N. Hawkins, W. F. Morrish, A. J.
Mount, Alfred E. Sbarboro, James A. Baciga-
lupi, George A. Webster, C. R. Bell, W. W.
Garthwaite and Louis Ferrari, jointly and sev-
erally.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed Sept. 23, 1943. [428]

[Title of District Court and Cause]

ORDER EXTENDING TIME FOR FILING
AND DOCKETING TRANSCRIPT OF
RECORD ON APPEAL

Upon application of the appellant and for good cause duly shown, the time for filing and docketing the transcript of the record on appeal in the above entitled action is hereby extended for a period of forty-five days from and after October 17th, 1943.

Dated this 12 day of October, 1943.

H. A. HOLLZER,

Judge. [430]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 430 inclusive contain full, true and correct copies of: Complaint; First Amended Complaint; Motions by Defendant Amadeo P. Giannini, individually and as executor of the last will and testament of Virgil D. Giannini, deceased, to Dismiss the Action; for an Order Requiring Plaintiff to Separately State Causes of Action in Separate Counts; for a more Definite Statement or Bill of Particulars and to Strike; Motions by Defendant Herbert E. White to Dismiss the Action; for an Order Requiring Plaintiff to Separately

State Causes of Action in Separate Counts; for a More Definite Statement or Bill of Particulars, and to Strike; Notice of Motions by Defendants Walston & Co., a copartnership and Charles de Y. Elkus, William S. Hoelscher, Clifford P. Hoffman, C. J. Smith, Vernon C. Walston and Claire Giannini Hoffman transacting business as copartners under the firm name and style of Walston & Co.; Motions by Defendants L. M. Giannini, individually, and as an alleged partner of Walston & Co., O. D. Hamlin, T. W. Harris, A. P. Jacobs, F. G. Stevenot, P. A. Bricca, George J. De Martini, W. N. Lagomarsino, Chester H. Loveland, Theodore M. Stuart, A. J. Scampini, Gordon Gray and Russ Avery to Dismiss the Action; for an Order Requiring Plaintiff Separately to State Causes of Action in Separate Counts; for a More Definite Statement or Bill of Particulars and to Strike; Motions by Defendants A. H. Giannini, William E. Blauer, Leon Bocqueraz, E. H. Clark, Charles N. Hawkins, W. F. Morrish (sued herein as W. F. Morrison), A. J. Mount, Alfred E. Sbarboro (sued as Alfred E. Sparboro), James A. Bacigalupi, George A. Webster, C. R. Bell, W. W. Garthwaite and Louis Ferrari, jointly and severally, to Dismiss the Action; for an Order Requiring Plaintiff to State Separately causes of Action in Separate Counts; for a More Definite Statement or Bill of Particulars, and To Strike Out Portions of the Complaint; Motion by Defendant Bank of America National Trust & Savings Association, as Administrator-with-the-will-annexed of the Estate of John M. Grant, Deceased, to Dismiss

the Action; for a More Definite Statement or Bill of Particulars; Minute Orders Entered June 25, 1942 and August 17, 1942 respectively; Second Amended Complaint; Motions by Defendants L. M. Giannini, individually and as an Alleged Partner of Walston & Co., Gordon Gray, O. D. Hamlin, T. W. Harris, A. P. Jacobs, F. G. Stevenot, Russ Avery, P. A. Bricca, George J. De Martini, W. N. Lagomarsino, A. J. Scampini, Chester H. Loveland and Theodore M. Stuart, to Dismiss the Action; for an Order Requiring Plaintiff Separately to State Causes of Action in Separate Counts; for a more Definite Statement or Bill of Particulars; and to Strike out the Entire Second Amended Complaint; and to Strike Out Designated Portions of the Second Amended Complaint; Motion of Defendant Bank of America National Trust & Savings Association, as Administrator-with-the-will-annexed of the Estate of John M. Grant, deceased, to Dismiss the Action; to Require Plaintiff to State Separately her several Causes of Action and for a More Definite Statement or Bill of Particulars; Motions by Defendants A. H. Giannini, William E. Blauer, Leon Bocqueraz, E. H. Clark, Charles N. Hawkins, W. F. Morrish, A. J. Mount, Alfred E. Sbarboro, James A. Bacigalupi, George A. Webster, C. R. Bell, W. W. Garthwaite and Louis Ferrari, jointly and severally, to Dismiss the Action; to Separately State the Several Causes of Action in Separate Counts, Said Motion being without Prejudice to Motions to Dismiss and to Strike, based on same ground; for a More Definite Statement and Bill of Particulars;

to Strike Out the Entire Second Amended Complaint and to Strike Out Designated Portions of the Second Amended Complaint; Motions by Defendants Charles de Y. Elkus, and Charles de Y. Elkus, William S. Hoelscher, Clifford P. Hoffman, C. J. Smith, Vernon C. Walston and Claire Giannini Hoffman, transacting business as copartners under the firm name and style of Walston & Co., and Walston & Co., a copartnership, jointly and severally to Dismiss the Action; for Statement in Separate Counts of Various Alleged Causes of Action; for a more Definite Statement and Bill of Particulars; Motions by Defendant Herbert E. White to Dismiss the Action; to Separately State the Several Causes of Action in Separate Counts, said motion being without prejudice to motions to dismiss and to strike; for a More Definite Statement and Bill of Particulars; to Strike out the Entire Second Amended Complaint and to Strike Out Certain Designated Portions of the Second Amended Complaint; Answer of Defendant Transamerica Corporation; Minute Order Entered April 16, 1943; Memorandum of Conclusions; Notice of Order Granting Motions to Dismiss; Letter dated October 27, 1942 to Hon. Harry A. Hollzer with minutes of Board of Directors of Transamerica Corporation attached; Order for Hearing and Designating Officer to take Testimony; Judgment of Dismissal; Notice of Appeal; Portions of Reporter's Transcript of Proceedings on Hearings Designated by Appellees; Clerk's Docket Entries; Bond for Costs on Appeal; Statement of Points upon which Ap-

pellant intends to Rely on the Appeal; Designation of Contents of Record on Appeal; Designation of Defendant Amadeo P. Giannini, of Additional Portions of the Record on Appeal; Supplemental Designation of Amadeo P. Giannini of Additional Portions of the Record on Appeal; Designation of Additional Portions of Record on Appeal and Order Extending Time for Filing and Docketing Transcript of Record on Appeal which constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$101.55 which sum has been paid to me by Appellant.

Witness my hand and the seal of said District Court this 29th day of November, 1943.

[Seal]

EDMUND L. SMITH,

Clerk,

By THEODORE HOCKE,

Deputy Clerk.

[Endorsed]: No. 10625. United States Circuit Court of Appeals for the Ninth Circuit. Rose Papantonio, suing in her own behalf as a shareholder of Transamerica Corporation and in behalf of all other shareholders of said corporation similarly situated, Appellant, vs. Amadeo P. Giannini, L. M. Giannini, A. H. Giannini, Amadeo P. Giannini (as Executor of the Last Will and Testament of Virgil D. Giannini, Deceased), Bank of America National Trust & Savings Association, a national banking association (as Administrator-With-The-Will-Annexed of the Estate of John M. Grant, Deceased), Gordon Gray, O. D. Hamlin, T. W. Harris, A. P. Jacobs, F. C. Stevenot, Russ Avery, P. A. Bricca, George J. De Martini, W. N. Lagomarsino, A. J. Scampini, William E. Blauer, Leon Bocqueraz, E. H. Clark, Charles N. Hawkins, W. F. Morrish, A. J. Mount, Alfred E. Sbarboro, Chester H. Loveland, P. C. Hale, James A. Bacigalupi, Armando Pedrini, George A. Webster, E. J. Nolan, C. R. Bell, W. W. Garthwaite, George N. Armsby, Louis Ferrari, V. Scialoja, Theodore M. Stuart, Herbert E. White, Charles de Y. Elkus, William S. Hoelscher, Clifford P. Hoffman, C. J. Smith, Vernon C. Walston, Amadeo P. Giannini, L. M. Giannini and Claire Giannini Hoffman, transacting business as co-partners under the firm name and style of Walston & Co., and Amadeo P. Giannini (as the Executor of the Last Will and Testament of Virgil D. Giannini, a deceased member of said co-partnership), Walston & Co., a co-partnership and Transamerica Corporation, a corporation, Appellees.

Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed: November 30, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10625

ROSE PAPANTONIO, suing on behalf of herself
and all other stockholders of Transamerica Cor-
poration, similarly situated, who may join in
the action and contribute to the expense thereof,
Appellant,

vs.

AMADEO P. GIANNINI, et al.,

Appellees.

STATEMENT OF POINTS ON WHICH AP-
PELLANT RELIES ON APPEAL AND
DESIGNATION OF PARTS OF THE REC-
ORD NECESSARY FOR THE CONSID-
ERATION THEREOF

To the Clerk of the Aforesaid Court, the Appellees
Named in This Action and Their Respective
Attorneys of Record:

Pursuant to Sub-division 6 of Rule 19 of the

above court, the appellant for her statement of the points upon which she intends to rely on the appeal and for her designation of the parts of the record which she thinks necessary for the consideration thereof, states as follows:

I.

For appellant's statement of points upon which she intends to rely on the appeal appellant hereby refers to her "Statement of Points" filed in the District Court of the United States, Southern District of California, Central Division in Cause No. 1490-H under Rule 75 (d) R.C.P. and hereby adopts the same as her "Statement of Points" required by said Sub-division 6 of Rule 19 of the above court.

II.

For appellant's "Designation of the Parts of the Record Which She Thinks Necessary for the Consideration of the Above Mentioned Points", appellant hereby refers to her "Designation of Contents of Record on Appeal" filed in the District Court of the United States, Southern District of California, Central Division in Cause No. 1490-H, under Rule 75 (a) R. C. P. and hereby adopts the same as her "Designation of the Parts of the Record Which She Thinks Necessary for the Consideration of the Above Mentioned Points" also required by Sub-division 6 of Rule 19 of the above court.

Appellant hereby requests that the above and foregoing statement of points and designation of parts of the typewritten transcript of the record constitute the "Printed Record on Appeal" from

the final judgment entered in the above entitled case by the District Court of the United States, Southern District of California, Central Division in said Cause No. 1490-H.

VINCENT ANTHONY MARCO,
HOMER N. BOARDMAN,
PERCY V. CLIBBORN,
Attorneys for Appellant.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed Dec. 10, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPELLEES' DESIGNATION OF PARTS OF
THE CERTIFIED TYPEWRITTEN REC-
ORD WHICH THEY THINK MATERIAL
AND WHICH THEY DESIRE TO HAVE
CONTAINED IN THE PRINTED RECORD

To the Honorable the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:
Honorable Paul P. O'Brien, Clerk of the Above
Entitled Court: Plaintiff and Appellant Herein
and Her Attorneys of Record:

In accordance with Rule 19, paragraph 6, of the Rules of this court, defendants and appellees state that they think that the parts of the certified type-written record hereinafter more particularly described are material and should be contained in the printed record herein, and they pray that the same be included in such printed record. The additional

parts of the certified typewritten record above referred to are more particularly described as follows:

Document	Beginning Page of Original Typewritten Record
Complaint	2
First Amended Complaint	21
Motions by Defendant Amadeo P. Giannini, Individually and as Executor of the Last Will and Testament of Virgil D. Giannini, Deceased, to Dismiss the Action; For an Order Requiring Plaintiff to Separately State Causes of Action in Separate Counts; For a More Definite Statement or Bill of Particulars, and to Strike, filed April 30, 1942.....	53
Affidavit of John N. Cramer	65
Notice of said Motions	63
Motions by Defendant Herbert E. White to Dismiss the Action; for an Order Requiring Plaintiff to Separately State Causes of Action in Separate Counts; for a More Definite Statement or Bill of Particulars and to Strike, filed April 30, 1942	68
Notice of said Motions	78
Notice of Motions by Defendants Walston & Co., a co-partnership, and Charles de Y. Elkus, William S. Hoelscher, Clifford P. Hoffman, C. J. Smith, Vernon C. Walston and Claire Giannini Hoffman, Transacting Business as Co-partners under the Firm Name and Style of Walston & Co., filed May 4, 1942	81

Document	Beginning Page of Original Typewritten Record
Motions by Defendants L. M. Giannini, Individually and as an Alleged Partner of Walston & Co., O. D. Hamlin, T. W. Harris, A. P. Jacobs, F. G. Stevenot, P. A. Bricca, George J. DeMartini, W. N. Lagomarsino, Chester H. Loveland, Theodore M. Stuart, A. J. Scampini, Gordon Gray and Russ Avery to Dismiss the Action; for an Order Requiring Plaintiff Separately to State Causes of Action in Separate Counts; For a More Definite Statement or Bill of Particulars and to Strike, filed May 4, 1942	88
Notice of said Motions	99
Motions by Defendants A. H. Giannini, William E. Blauer, Leon Bocqueraz, E. H. Clark, Charles N. Hawkins, W. F. Morrish, A. J. Mount, Alfred E. Sbarboro, James A. Baciagalupi, George A. Webster, C. R. Bell, W. W. Garthwaite, and Louis Ferrari, Jointly and Severally, to Dismiss the Action, for an Order Requiring Plaintiff to State Separately Causes of Action in Separate Counts; for a More Definite Statement or Bill of Particulars and to Strike Out Portions of the Complaint, filed May 4, 1942	101
Notice of said Motions	110

Document	Beginning Page of Original Typewritten Record
Motion by Defendant Bank of America National Trust & Savings Association, as Administrator-with-the-will-annexed of the Estate of John M. Grant, Deceased, to Dismiss the Action; for a More Definite Statement or Bill of Particulars, filed May 4, 1942	113
Notice of said Motion	119
Notice of Motions of Defendant Amadeo P. Giannini, filed September 15, 1942	181
Notice of Motions by Defendants L. M. Giannini, et al., filed September 15, 1942	199
Notice of Motions by Bank of America National Trust & Savings Association, as Administrator, etc., filed September 15, 1942	214
Notice of Motions by Defendants A. H. Giannini, et al., filed September 15, 1942	227
Affidavit of Edmund Nelson	228
Affidavit of Hector Campana	231
Exhibit A to Affidavit of Hector Campana	234
Notice of Motions by Defendants Charles de Y. Elkus, et al., filed September 15, 1942	247
Notice of Motions by Defendant Herbert E. White, filed September 15, 1942	267
Notice of Order Granting Motions to Dismiss and Affidavit of Service Thereof	310

Document	Beginning Page of Original Typewritten Record
Letter dated October 27, 1942, to Honorable Harry A. Hollzer, with minutes of meeting of Board of Directors of Transamerica Corporation attached, filed April 21, 1943	313
Portions of Reporter's Transcript of proceedings on hearings designated by appellees, filed November 24, 1943	371
Clerk's docket entries	397
Designation of Defendant Amadeo P. Giannini of Additional Portions of the Record on Appeal	414
Supplemental Designation of Amadeo P. Giannini of Additional Portions of Record on Appeal	422
Designation of Additional Portions of Record on Appeal	426
Dated this 10th day of December, 1943.	
T. B. COSGROVE,	
F. J. O'NEIL,	
JOHN N. CRAMER,	
By JOHN N. CRAMER,	
Attorneys for Appellee, Amadeo P. Giannini, Individually and as Executor of the Last Will and Testament of Virgil D. Giannini, Deceased.	

GEORGE D. SCHILLING and
G. L. BERREY,

By G. L. BERREY,

Attorney for Appellee, Bank of America National
Trust & Savings Association, as Administrator-
with-the-will-annexed of the Estate of John M.
Grant, Deceased.

RUSS AVERY and
GORDON GRAY,

By RUSS AVERY,

Attorneys for Appellees, L. M.
Giannini, et al.,

ROBERT A. ODELL,

Attorney for Appellee, Her-
bert E. White.

LOUIS FERRARI,

HERBERT W. ERSKINE,

Attorneys for Appellees, A. H.
Giannini, et al.

BACIGALUPI, ELKUS &
SALINGER,

CLAUDE W. ROSENBERG,

Attorneys for Appellees,
Walston & Co., et al.

[Endorsed]: Filed Dec. 14, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION REGARDING PRINTING OF
RECORD ON APPEAL

The appellant in above action has filed herein a motion that there be omitted from the printed record on appeal certain of the papers and records designated by the appellees to be included thereon.

It Is Stipulated and Agreed Between the Parties that all the papers and records so designated by the appellees as well as those designated by the appellant shall be included as part of the said printed record; that the appellant shall deposit in said Court the estimated cost of printing the said record; and that the appellees will deposit a like amount; said deposits to abide the order of this Court;

Provided, however, that it is also stipulated and agreed between the parties hereto as follows:

1. The foregoing agreement will be without prejudice to the appellees' contention that all of the said papers and records are properly a part of the said record on appeal and therefore should be printed as a part of it.

2. The said agreement is without prejudice to appellees' contention that in any event the appellees, in the event said appeal is decided in their favor, can be held liable only for the cost of printing such portion, if any, of the record on appeal, as the Court may determine was unnecessarily printed in the said record.

3. Said agreement shall be without prejudice to the contention of appellant that all the papers and

documents referred to in her said motion are unnecessary, and therefore should not be printed as a part of said record.

It Is Stipulated and Agreed that upon said record on appeal being printed the clerk of the above court shall defray the expense thereof from the funds deposited by appellant and appellees pursuant to the foregoing, and shall hold an equal amount on deposit until the Court finally determines and taxes the cost of printing said record. Should the printing cost be less than the estimated cost thereof appellant and appellee, respectively, shall have refunded to them by said Clerk upon completion of such printing an amount equal to the difference between the estimated and actual cost of printing.

Dated at San Francisco, California, February 7, 1944.

VINCENT ANTHONY MARCO

Of counsel for appellant.

CLAUDE W. ROSENBERG,

MORSE ERSKINE,

Of counsel for appellees.

[Endorsed]: Filed Feb. 7, 1944. Paul P. O'Brien, Clerk.

